

MONTANA LEGISLATIVE HISTORY

Chapter 494 19 75

Bill H 581 S _____ Original bill & history ✓c

H. Committee on Natural Resources S. Committee on Natural Resources

Hearing Date(s) _____ c Hearing Date(s) _____ c

_____ c _____ c

2/18 ✓ c 3/20 ✓ c

_____ c 3/25 ✓ c

Date Out 2/25 ✓ c 3/25 ✓

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

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1975
house

NATURAL RESOURCES COMMITTEE PAGE 7

— Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HJR 48	Requests a study for the development of a statewide soil inventory.	Feb. 1	Gunderson	Feb. 6	DO PASS AS AMENDED	Feb. 13
HB 579	Act to clarify commission's power to regulate the use of lands by adding lakes, rivers, and streams and the operation of motor boats.	Feb. 3	Luebeck	Feb. 8	DO PASS AS AMENDED	Feb. 15
HB 581	Act to revise the Montana Utility Siting Act	Feb. 3	Bardanoue	Feb. 18	DO PASS AS AMENDED	Feb. 25 AM
SB 19	Removing secrecy from the hard rock mining bill	Feb. 3	Lynch	Feb. 11	AS SO AMENDED BE CONCURRED IN	Feb. 20 PM
SB 38	Act to establish procedures for maintaining the confidentiality of trade secrets involved in air pollution proceedings; etc.	Feb. 4	Norman	March 6	BE CONCURRED IN AS AMENDED	March 13
HB 600	Act to clarify state policy on the management of state lands.	Feb. 5	Bradley	Feb. 20	DO PASS	Feb. 20

1 *House* BILL NO. *581*
 2 INTRODUCED BY *Barbara Miley*
 3 *Kammer*
 4 *VINCENT*, *David* *Anderson* *Harper* *Bradley*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
 6 70-801 THROUGH 70-808, 70-810 THROUGH 70-823, R.C.M. 1947,
 7 TO GENERALLY REVISE THE MONTANA UTILITY SITING ACT OF 1973;
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 70-801, R.C.M. 1947, is amended to
 11 read as follows:

12 "70-801. Short title. This ~~act~~ chapter shall be known
 13 ~~and~~ may be cited as the Montana Utility Siting Act ~~of~~
 14 ~~1973.~~"

15 Section 2. Section 70-802, R.C.M. 1947, is amended to
 16 read as follows:

17 "70-802. Policy and legislative findings. It is the
 18 constitutionally declared policy of this state to maintain
 19 and improve a clean and healthful environment for present
 20 and future generations; to protect the environmental life
 21 support system from degradation and prevent unreasonable
 22 depletion and degradation of natural resources; and to
 23 provide for administration and enforcement to attain these
 24 objectives.

25 The legislature finds that the construction of

1 additional power and or energy conversion facilities may be
 2 necessary to meet the increasing need for electricity, and
 3 other energy, and other products, and that such these
 4 facilities have an effect on the environment, an impact on
 5 population concentration, and an effect on the welfare of
 6 the citizens of this state. Therefore, it is necessary to
 7 ensure that the location, construction and operation of
 8 power and energy conversion facilities will produce minimal
 9 adverse effects on the environment and upon the citizens of
 10 this state by providing that no a power or energy conversion
 11 facility shall-hereafter may not be constructed or operated
 12 within this state without a certificate of environmental
 13 compatibility and public need acquired pursuant to this act
 14 chapter."

15 Section 3. Section 70-803, R.C.M. 1947, is amended to
 16 read as follows:

17 "70-803. Definitions. ~~The following words, when used~~
 18 ~~in this act, shall have the following meanings unless~~
 19 ~~otherwise clearly apparent from the context~~ In this chapter,
 20 unless the context requires otherwise:

21 (1) ~~the word "department"~~ "Department" means the
 22 department of natural resources and conservation provided
 23 for in Title 82A, chapter 15.

24 (2) ~~the word "board"~~ "Board" means the board of
 25 natural resources and conservation provided for in section

INTRODUCED BILL

44th 581

1 82A-1509.

2 (3) ~~the words "utility facility" or "facility" mean~~
3 "Facility" means:

4 (a) ~~any energy-generating-and-conversion~~ each plant,
5 unit, or other facility and associated facilities, except
6 for oil and gas refineries,

7 (i) designed for, or capable of, generating at fifty
8 (50) megawatts of electricity or more, or any addition
9 thereto (except pollution control facilities approved by the
10 department of health and environmental sciences added to an
11 existing plant) having an estimated cost in excess of two
12 hundred fifty thousand dollars (\$250,000), or

13 (ii) designed for, or capable of, producing ~~one~~
14 ~~hundred million (100,000,000)~~ twenty-five million
15 (25,000,000) cubic feet of gas per day or more, or any
16 addition thereto having an estimated cost in excess of two
17 hundred fifty thousand dollars (\$250,000), or

18 (iii) designed for, or capable of, producing ~~fifty~~
19 ~~thousand (50,000)~~ twenty-five thousand (25,000) barrels of
20 liquid hydrocarbon products per day or more, or any addition
21 thereto having an estimated cost in excess of two hundred
22 fifty thousand dollars (\$250,000), or

23 (iv) designed for, or capable of, enriching uranium
24 minerals, or any addition thereto having an estimated cost
25 in excess of two hundred fifty thousand dollars (\$250,000),

1 or

2 (v) designed for, or capable of, utilizing, refining,
3 processing, or converting five hundred thousand (500,000)
4 tons of coal per year or more, or any addition thereto
5 having an estimated cost in excess of two hundred fifty
6 thousand dollars (\$250,000);

7 (b) an each electric transmission line and associated
8 facilities of a design capacity of ~~thirty-four-and-one-half~~
9 ~~(34.5)~~ more than sixty-nine (69) kilovolts or more, except
10 that ~~the following transmission lines and associated~~
11 ~~facilities shall be subject to certain exceptions under the~~
12 ~~act:~~

13 ~~(i) a transmission line and associated facilities with~~
14 ~~a design capacity of sixty-nine (69) kilovolts or less and~~
15 ~~which will be constructed above ground for a distance of ten~~
16 ~~(10) miles or less shall not be considered a utility~~
17 ~~facility within the definitions of this act;~~

18 ~~(ii) a transmission line and associated facilities with~~
19 ~~a design capacity of one hundred sixty-one (161) kilovolts~~
20 ~~or less and which will be constructed underground for a~~
21 ~~distance of five (5) miles or less shall not be considered a~~
22 ~~utility facility within the definitions of this act;~~

23 ~~(iii) a transmission line or associated facilities of a~~
24 ~~design capacity of one hundred sixty-one (161) kilovolts or~~
25 ~~less which does not meet the requirements of subsections (i)~~

1 and ~~(ii) of this subsection shall be subject to the specific~~
 2 ~~time review requirements for transmission lines in section~~
 3 ~~67 subsection (1) 70-806 (1) and section 77 subsection (1)~~
 4 ~~70-807 (1) of this act if the proposed length of the~~
 5 ~~transmission line will not exceed thirty (30) miles,~~

6 ~~(iv) unless specifically covered by subsections (i) 7~~
 7 ~~(ii) or (iii) of this subsection, the construction of all~~
 8 ~~transmission lines and associated facilities shall be~~
 9 ~~subject to the two (2) year time requirement of section 67~~
 10 ~~subsection (1) 70-806 (1) and the six hundred (600) day~~
 11 ~~requirement of section 77 subsection (1) 70-807 (1),~~

12 ~~(v) the provisions of subsections (i) and (ii) of this~~
 13 ~~subsection shall not be construed as authorizing the~~
 14 ~~simultaneous construction of two (2) or more transmission~~
 15 ~~lines serving the same community or customer which would,~~
 16 ~~when constructed separately, come within the exceptions of~~
 17 ~~subsections (i) and (ii);~~ the term does not include an
 18 electric transmission line and associated facilities of a
 19 design capacity of less than two hundred thirty (230)
 20 kilovolts and ten (10) miles or less in length;

21 ~~(c) a gas or liquid transmission line~~ each pipeline
 22 and associated facilities designed for, or capable of,
 23 transporting gas, water, or liquid hydrocarbon products
 24 from or to a gasification or liquefaction facility located
 25 within or without this state of the size indicated in

1 ~~subsections (a) (ii) and (a) (iii)~~ subsection (3) (a) of
 2 this section;

3 (d) any use of geothermal resources, including the use
 4 of underground space in existence or to be created, for the
 5 creation, use, or conversion of energy;

6 (e) any underground in situ gasification of coal.

7 ~~(4) the words "associated~~ "Associated facilities"
 8 include, but are not limited to, transportation links of any
 9 kind, aqueducts, diversion dams, substations, including
 10 distribution substations, storage ponds, reservoirs, and
 11 any other device or equipment associated with the
 12 production, or delivery of the energy form or product
 13 produced by a facility, except that the term does not
 14 include a facility.

15 ~~(5) the words "commence~~ "Commence to construct" mean
 16 means:

17 (a) any clearing of land, excavation, construction, or
 18 other action that would affect the environment of the site
 19 or route of a utility facility, but do does not include mean
 20 changes needed for temporary use of sites or routes for
 21 nonutility purposes, or uses in securing geological data,
 22 including necessary borings to ascertain foundation
 23 conditions. The words do include the commencement of
 24 eminent domain proceedings under Title 93, chapter 99,
 25 R.E.M. 1947, for land or rights of way upon which a utility

1 ~~facility may be constructed;~~

2 (b) the fracturing of underground formations by any
3 means, if ~~any~~ such activity is related to the possible
4 future development of ~~an underground utility~~ a gasification
5 ~~facility or a facility~~ employing geothermal resources, but
6 ~~do~~ does not include the gathering of geological data by
7 boring of test holes or other underground exploration,
8 investigation, or experimentation;

9 (c) the commencement of eminent domain proceedings
10 under Title 93, chapter 99, for land or rights of way upon
11 or over which a facility may be constructed;

12 (d) the relocation or upgrading of an existing
13 facility defined by subsection (3) (b) or (c), including
14 upgrading to a design capacity covered by subsection (3)
15 (b), except that the term does not include normal
16 maintenance or repair of an existing facility.

17 (6) ~~the word "municipality"~~ "Municipality" means any
18 county or municipality within this state.

19 (7) ~~the word "person" includes~~ "Person" means any
20 individual, group, firm, partnership, corporation,
21 cooperative, association, government subdivision, government
22 agency, local government, or other organization or entity.

23 (8) ~~the words "public utility" or "utility" mean~~
24 "Utility" means any person engaged in any aspect of the
25 production, storage, sale, delivery or furnishing of heat,

1 electricity, gas, or energy in any form for ultimate public
2 use.

3 (9) ~~"certificate"~~ "Certificate" means the certificate
4 of environmental compatibility and public need issued by the
5 board under this chapter and that is required for the
6 construction or operation of ~~any~~ a facility."

7 Section 4. Section 70-804, R.C.M. 1947, is amended to
8 read as follows:

9 "70-804. Certificate from board required prior to
10 construction of ~~utility~~ facility--~~exemptions~~. (1) ~~No~~ A
11 person ~~shall~~ may not commence to construct a ~~utility~~
12 facility in the state without first ~~having obtained~~ applying
13 for and obtaining a certificate of environmental
14 compatibility and public need issued with respect to ~~such~~
15 the facility by the board. ~~Any~~ A facility, with respect to
16 which a certificate is ~~required~~ issued, ~~shall~~ may not
17 thereafter be constructed, operated ~~and or~~ maintained
18 ~~except~~ in conformity with ~~such the~~ certificate and any
19 terms, conditions and modifications contained therein. A
20 certificate may only be issued pursuant to this ~~act~~ chapter.

21 (2) A certificate may be transferred, subject to the
22 approval of the department, to a person who agrees to comply
23 with the terms, conditions and modifications contained
24 therein.

25 (3) This ~~act--shall~~ chapter does not apply to ~~any~~

1 ~~utility~~ a facility over which an agency of the federal
2 government has exclusive jurisdiction.

3 (4) The board may adopt reasonable rules establishing
4 exemptions from this chapter for the relocation,
5 reconstruction, or upgrading of a facility that would
6 otherwise be covered by this chapter and that is unlikely to
7 have a significant environmental impact by reason of length,
8 size, location, available space or right of way, or
9 construction methods.

10 (5) A certificate is not required under this chapter
11 for a facility under diligent on site physical construction
12 or in operation on January 1, 1973."

13 Section 5. Section 70-805, R.C.M. 1947, is amended to
14 read as follows:

15 "70-805. Surcharge on electric energy producer's
16 license tax--administrative expenses--tax on gasification,
17 liquefaction, uranium enrichment facilities. (1) Every
18 "producer" as defined in chapter 16 of Title 84,--the
19 ~~electrical-energy-producers'-license-tax~~, shall, in addition
20 to the sum required to be paid by that ~~act chapter~~, pay an
21 additional twenty-five hundredths percent (0.25%) of the
22 gross amount as shown on the statement which is required by
23 that ~~act chapter~~, in the same manner and within the time
24 provided by that ~~act chapter~~. The ~~state--board--of~~
25 ~~equalization department of revenue~~ shall report to the state

1 treasurer separately the amount transmitted to the state
2 treasurer which is added to the electrical energy producers'
3 license tax by this section ~~of this act~~.

4 (2) The legislature shall appropriate sufficient funds
5 to finance the department's activities in carrying out its
6 duties under this ~~act chapter~~. The legislature shall provide
7 a tax on gasification, liquefaction, coal conversion, and
8 uranium enrichment facilities sufficient to produce an
9 amount of revenue equal to that derived from electrical
10 energy producers under this section."

11 Section 6. Section 70-806, R.C.M. 1947, is amended to
12 read as follows:

13 "70-806. Application for certification--filing and
14 contents--filing fees--use-of--filing--fees notice of
15 completion of facility--further fees--proof of service on
16 municipalities--waiver-of--time--requirement amendment of
17 application or certification. (1) (a) At--least-two--(2)
18 years-prior-to-anticipated-commencement-of-construction-of-a
19 utility-facility-as-defined-in--sections--70-803--(3)--(a),
20 70-803--(3)--(b)--(iv), 70-803--(3)--(c), and 70-803--(3)--(d) and
21 at--least--nine--(9)--months--prior--to--the--anticipated
22 commencement--date-of-the-construction-of-a-utility-facility
23 as-defined-in-section-70-803--(3)--(b)--(iii), an An applicant
24 for a certificate shall file with the department an a
25 verified application, in such form as the department--may

1 prescribe board by rule or the department by order
 2 prescribes, containing the following information:

3 ~~(a)~~ (i) a description of the location and of the
 4 utility facility to be built thereon;

5 ~~(b)~~ (ii) a summary of any studies which have been made
 6 of the environmental impact of the facility;

7 ~~(c)~~ (iii) a statement explaining the need for the
 8 facility;

9 ~~(d)~~ (iv) a description of any reasonable alternate
 10 location or locations for the proposed facility, a
 11 description of the comparative merits and detriments of each
 12 location submitted, and a statement of the reasons why the
 13 primary proposed location is best suited for the facility;
 14 and

15 ~~(e)~~ (v) such other information as the applicant may
 16 consider considers relevant or as the board by rule or the
 17 department may by regulation or order require requires. A
 18 copy or copies of the studies referred to in clause ~~(b)~~ (ii)
 19 above shall be filed with the department, if ordered, and
 20 shall be available for public inspection.

21 (b) An application may consist of an application for
 22 two (2) or more facilities in combination, such as power
 23 units and transmission lines.

24 ~~(2) (a) A filing fee shall be deposited in the state~~
 25 ~~general fund. Said fee shall be~~ The applicant shall pay to

1 the department a filing fee with the application, based
 2 upon the estimated cost of the facility according to the
 3 declining scale which follows: ~~The applicant shall pay the~~
 4 ~~accumulated sums calculated as follows:~~ three percent (3%)
 5 of any estimated cost up to one million dollars
 6 (\$1,000,000); plus one percent (1%) of any estimated cost
 7 over a million dollars and up to twenty million dollars
 8 (\$20,000,000); plus one-half of one percent (0.5%) of any
 9 estimated cost over twenty million dollars (\$20,000,000);
 10 and up to one hundred million dollars (\$100,000,000); plus
 11 one-quarter of one percent (0.25%) of any amount of
 12 estimated cost over one hundred million (\$100,000,000) and
 13 up to three hundred million dollars (\$300,000,000); plus
 14 one-tenth of one percent (0.1%) of any amount of estimated
 15 cost over three hundred million dollars (\$300,000,000). It
 16 is the intent of the legislature that the revenues derived
 17 from the filing fee be used by the department in compiling
 18 the information required for rendering a decision on a
 19 certificate and for carrying out its other responsibilities
 20 under this act. If an application consists of a combination
 21 of two (2) or more facilities, the filing fee shall be the
 22 total of the fees based on the estimated cost of each
 23 facility considered separately.

24 (b) If a certificate is issued by the board for the
 25 proposed facility, immediately upon completion of

construction of the facility the applicant shall give a notice of completion to the department. As soon as possible after giving the notice of completion, the applicant shall file an affidavit with the department stating the actual cost of the facility in such detail as the department may require to determine whether a further fee is due. If the actual cost exceeds the estimated cost, the applicant shall file a further fee for the difference based upon the declining scale in subsection (2) (a) of this section. No further fee is required, however, if it is computed to be five hundred dollars (\$500) or less.

(3) ~~Each~~ An application shall be accompanied by proof of service of a copy of ~~such the~~ application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of ~~such the~~ facility is to be located, both as primarily and as alternatively proposed. The copy of ~~such the~~ application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) ~~Each~~ An application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which

it is to be filed, in ~~such those~~ newspapers as will serve substantially to inform ~~such those~~ persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of an application or a certificate shall be in such form and contain such information as the ~~department shall prescribe~~ board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section. If an amendment to an original application would result in a substantial change of the original application, such an amendment shall be considered as a new application and a new filing fee shall be required.

~~(7) -- The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and~~

that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

(8) The board may, in its discretion, waive the necessity of filing an application where utility facilities are being relocated pursuant to sections 32-2414 through 32-2416, R.C.M. 1947, and where it is satisfied after an examination of the environmental impact statement filed pursuant to chapter 65 of Title 69, R.C.M. 1947, that such relocation will not significantly affect the environment."

Section 7. Section 70-807, R.C.M. 1947, is amended to read as follows:

"70-807. Study, evaluation and report on proposed facility--hearing on application for amendment of certificate--hearings. (1) Upon receipt of an application complying with section 70-806, the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to--section--70-816--of--this--act considering all the criteria listed in sections 70-810 and 70-816. Within six--hundred--(600)--days two (2) years following receipt of the an application for a facility as defined in sections subsections 70-803 (3) (a), 70-803--(b) (iv), 70-803--(3)--(e), and 70-803 (3) (d) and for a facility as defined in subsections 70-803 (3) (b) and (c) which is

more than thirty (30) miles in length, and within one hundred--eighty--(180)--days one (1) year for a facility as defined in sections 70-803--(b)--(iii) subsections 70-803 (3) (b) and (c) which is thirty (30) miles or less in length, the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 70-816 of this act, and the final environmental impact statement. If the application is for a facility which was not listed or proposed in a long-range plan submitted by the applicant to the department at least six (6) months before the filing of the application pursuant to section 70-814, the department shall then have three (3) years and two (2) years, respectively, to make its report to the board. If the application is for a combination of two (2) or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(2) The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information The report may include opinions as to the

advisability of granting, or denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

~~(2)~~ (3) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such the facility other than as provided in the alternates set forth in the application.

~~(3)~~ (4) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date for a hearing to begin not more than sixty (60) days after such the receipt."

Section 8. Section 70-808, R.C.M. 1947, is amended to read as follows:

"70-808. Parties to certification proceeding--waiver by failure to participate. (1) The parties to a certification proceeding include:

(a) the applicant;

(b) each municipality and government agency entitled to receive service of a copy of the application under

~~subsection (3)-of-section-6-(70-806-(3))-of-this-act 70-806~~
~~(3); and~~

(c) any person residing in a municipality entitled to receive service of a copy of the application under ~~subsection (4)-of-section-6-(70-806-(4))-of-this-act 70-806~~
~~(4);~~ any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and

(d) the department.

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing before the board."

Section 9. Section 70-810, R.C.M. 1947, is amended to read as follows:

"70-810. Decision of board--findings necessary for certificate--conditions imposed--~~service-of-decision-on parties.~~ (1) The Within ninety (90) days after the last day of the hearing, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or

granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the ~~utility~~ facility as the board ~~may deem~~ considers appropriate. The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in section ~~16-170-016~~ of this act 70-816;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that such the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that such facilities the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply

any local law or regulation if it finds that, as applied to the proposed facility, such the law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience and necessity; and

(h) that duly authorized state and federal air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, ~~shall~~ have been given reasonable notice of the modification.

(3) ~~A copy of the decision and any opinion issued with the decision shall be served upon each party.~~ In determining that the facility will serve the public interest, convenience, and necessity under subsection (1) (g) of this

advisability of granting, or denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

~~(2)~~ (3) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of ~~such~~ the facility other than as provided in the alternates set forth in the application.

~~(3)~~ (4) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date for a hearing to begin not more than sixty (60) days after ~~such~~ the receipt."

Section 8. Section 70-808, R.C.M. 1947, is amended to read as follows:

"70-808. Parties to certification proceeding--waiver by failure to participate. (1) The parties to a certification proceeding include:

(a) the applicant;

(b) each municipality and government agency entitled to receive service of a copy of the application under

~~subsection (3) of section 6-(70-806-(3)) of this act~~ 70-806 (3); and

(c) any person residing in a municipality entitled to receive service of a copy of the application under subsection ~~(4) of section 6-(70-806-(4)) of this act~~ 70-806 (4); any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and

(d) the department.

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing before the board."

Section 9. Section 70-810, R.C.M. 1947, is amended to read as follows:

"70-810. Decision of board--findings necessary for certificate--conditions imposed--~~service of decision on parties.~~ (1) The Within ninety (90) days after the last day of the hearing, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or

1 granting it upon such terms, conditions, or modifications of
 2 the construction, operation or maintenance of the ~~utility~~
 3 facility as the board ~~may-deem~~ considers appropriate. The
 4 board may not grant a certificate either as proposed by the
 5 applicant or as modified by the board unless it shall find
 6 and determine:

7 (a) the basis of the need for the facility;

8 (b) the nature of the probable environmental impact;

9 (c) that the facility represents the minimum adverse
 10 environmental impact, considering the state of available
 11 technology and the nature and economics of the various
 12 alternatives;

13 (d) each of the criteria listed in section ~~16-170-016~~
 14 ~~of this act~~ 70-816;

15 (e) in the case of an electric, gas, or liquid
 16 transmission line or aqueduct, what part, if any, of the
 17 line or aqueduct shall be located underground; that ~~such the~~
 18 facility is consistent with regional plans for expansion of
 19 the appropriate grid of the utility systems serving the
 20 state and interconnected utility systems; and that ~~such~~
 21 ~~facilities~~ the facility will serve the interests of utility
 22 system economy and reliability;

23 (f) that the location of the facility as proposed
 24 conforms to applicable state and local laws and regulations
 25 issued thereunder, except that the board may refuse to apply

1 any local law or regulation if it finds that, as applied to
 2 the proposed facility, ~~such the~~ law or regulation is
 3 unreasonably restrictive in view of the existing technology,
 4 or of factors of cost or economics, or of the needs of
 5 consumers whether located inside or outside of the directly
 6 affected government subdivisions;

7 (g) that the facility will serve the public interest,
 8 convenience and necessity; and

9 (h) that duly authorized state and federal air and
 10 water quality agencies have certified that the proposed
 11 facility will not violate state and federally established
 12 standards and implementation plans; the judgments of duly
 13 authorized air and water quality agencies are conclusive on
 14 all questions related to the satisfaction of state and
 15 federal air and water quality standards.

16 (2) If the board determines that the location of all
 17 or a part of the proposed facility should be modified, it
 18 may condition its certificate upon such modification,
 19 provided that the municipalities, and persons residing
 20 therein, affected by the modification, ~~shall~~ have been given
 21 reasonable notice of the modification.

22 ~~(3) A copy of the decision and any opinion issued with~~
 23 ~~the decision shall be served upon each party. In determining~~
 24 ~~that the facility will serve the public interest,~~
 25 convenience, and necessity under subsection (1) (g) of this

section, the board shall consider:

(i) the items listed in subsections (1) (a) through (b) of this section;

(ii) the benefits to the applicant and the state resulting from the proposed facility;

(iii) the effects of the economic activity resulting from the proposed facility;

(iv) the effects of the proposed facility on the public health, welfare, and safety;

(v) any other factors that it considers relevant."

Section 10. Section 70-811, R.C.M. 1947, is amended to read as follows:

"70-811. Opinion issued with decision--contents of certificate--waiver of time requirements--facilities for which certificate required. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph--(f)---of subsection--(1)---of--section--10--{70-810--(1)(f)}--of--this--act subsection 70-810 (1) (f), it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

(a) An environmental evaluation statement related to the ~~facilities~~ facility being certified. The statement shall include, but not be limited to, analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed ~~facilities~~ facility; and

(v) a plan for monitoring environmental effects of the proposed facility.

(b) A statement signed by the applicant showing agreement to comply with the requirements of this ~~act~~ chapter and the conditions of the certificate.

(3) The time requirement of section 6--~~{70-806}~~ 70-806 and any of the provisions described in sections 7--~~through-11~~ ~~{70-807--to-70-811}~~ of this act 70-807 through 70-811 may be waived by the board, for good cause shown, with respect to applications filed before January 1, 1975. Applications for certificates under this subsection ~~{3}~~ must be promptly filed. A--certificate--is--not--required--under--this--act--for--facilities--under--construction--or--in--operation--on--January--1, 1973--However,--a--certificate--must--be--obtained--for--associated

facilities--upon-which-construction-has-not-commenced-before
January-17-1973;-subject-to-the-waiver--provisions--of--this
subsection."

Section 11. Section 70-812, R.C.M. 1947, is amended to
read as follows:

"70-812. Review---of---denial---of---certificate---by
board--procedure Judicial review of board decision. ~~{1}~~ Any
party as defined in section ~~8-{70-800}~~-of-this-act 70-808
aggrieved by the final decision of the board on an
application for a certificate, may obtain judicial review of
that decision by the filing of a petition in a state
district court of competent jurisdiction, ~~within-thirty-{30}~~
~~days-after-the-issuance-of-such-final-decision. Upon receipt~~
~~of-such-petition, the department shall deliver to the court~~
~~a--copy--of--the--written--transcript--of--the-record-of-the~~
~~proceeding-before-it-and-a-copy-of-the-board's-decision--and~~
~~opinion-entered-therein-which-shall-constitute-the-record-on~~
~~judicial--review. A--copy--of-such-transcript, decision-and~~
~~opinion-shall-remain-on-file-with-the-department--and--shall~~
~~be-available-for-public-inspection.~~

~~{2}--if--a--decision--is--issued--after--a--hearing--on--an~~
~~application-for-a-certificate, such-decision--is--final--for~~
~~purpos-es--of---judicial-review. The judicial review procedure~~
shall be the same as that for contested cases under the
Montana Administrative Procedure Act ~~{82-4201-to-82-4225}~~."

Section 12. Section 70-813, R.C.M. 1947, is amended to
read as follows:

"70-813. Jurisdiction of courts restricted. Except as
expressly set forth in sections ~~12,--17-and-21-{70-812,~~
~~70-817-and-70-821}~~-of-this-act 70-812, 70-817, and 70-821,
no court of this state ~~shall-have~~ has jurisdiction to hear
or determine any issue, case or controversy concerning any
matter which was or could have been determined in a
proceeding before the board under this ~~act~~ chapter or to
stop or delay the construction, operation or maintenance of
a ~~utility~~ facility, except to enforce compliance with this
~~act~~ chapter or the provisions of a certificate issued
hereunder pursuant to sections ~~19-or-21-{70-819--or--70-821}~~
~~of-this-act 70-819 or 70-821.~~"

Section 13. Section 70-814, R.C.M. 1947, is amended to
read as follows:

"70-814. Annual long-range plan submitted--
contents--available to public. (1) Each utility, and each
person contemplating the construction of a facility within
this state in the ensuing ten (10) years, shall furnish
annually to the department for its review, a long-range plan
for the construction and operation of utility facilities.
~~Such~~ The plan shall be submitted on April 1 of each year,
~~The plan and~~ shall include the following:

(a) the general location, size and type of all utility

1 facilities to be owned and operated by the utility or person
 2 whose construction is projected to commence during the
 3 ensuing ten (10) years, as well as those facilities to be
 4 removed from service during the planning period;

5 (b) a description of efforts by the utility or person
 6 to coordinate the plan with other utilities or persons so as
 7 to provide a coordinated regional plan for meeting the
 8 utility facilities needs of the region;

9 (c) a description of the efforts to involve
 10 environmental protection and land use planning agencies in
 11 the planning process, as well as other efforts to identify
 12 and minimize environmental problems at the earliest possible
 13 stage in the planning process;

14 (d) projections of the demand for the service rendered
 15 by the utility or person and explanation of the basis for
 16 such those projections, and a description of the manner and
 17 extent to which the proposed facilities will meet the
 18 projected demand; and

19 (e) additional information that the board by rule or
 20 the department on its own initiative or upon the advice of
 21 interested state agencies might request in order to carry
 22 out the purposes of this act chapter.

23 (2) The plan shall be made available to the public by
 24 the department, and the utility or person shall ~~be required~~
 25 ~~to~~ give public notice throughout the state of its plan by

1 filing the plan with the environmental quality council, the
 2 department of health and environmental ~~science sciences~~, the
 3 department of highways, the department of public service
 4 regulation, the department of state lands and the department
 5 of intergovernmental relations. Citizen environmental
 6 protection and resource planning groups, and other
 7 interested persons may obtain a plan by written request and
 8 payment therefor to the department."

9 Section 14. Section 70-815, R.C.M. 1947, is amended to
 10 read as follows:

11 "70-815. Study of planned facilities included in
 12 annual long-range report. If a utility or person lists and
 13 identifies a proposed ~~utility~~ facility in its plan,
 14 submitted pursuant to section ~~14--{70-814}--of--this-act~~
 15 70-814, as one on which construction is proposed to be
 16 commenced within the five (5) year period ~~next-proceeding~~
 17 following submission of the plan, the department shall
 18 commence examination and evaluation of the proposed site to
 19 determine whether construction of the proposed facility
 20 would unduly impair the environmental values in section ~~16~~
 21 ~~{70-816}--of--this-act~~ 70-816. This study may be continued
 22 until such time as a utility person files an application for
 23 a certificate under section ~~6--{70-806}--of--this-act~~ 70-806.
 24 Information gathered under this section may be used to
 25 support findings and recommendations required for issuance

1 of a certificate."

2 Section 15. Section 70-816, R.C.M. 1947, is amended to
3 read as follows:

4 "70-816. Environmental factors considered in
5 evaluating long-range plans. In evaluating long-range plans,
6 conducting five-year site reviews, and evaluating
7 applications for certificates ~~of--site--and--facility~~, the
8 board and department shall give consideration to the
9 following list of environmental factors and may, by
10 regulation rule, add to the categories of this section:

11 (1) Energy needs.

12 (a) Growth in demand and projections of need.

13 (b) Availability and desirability of alternative
14 sources of energy.

15 (c) Availability and desirability of alternative
16 sources of energy in lieu of the proposed facility.

17 (d) Promotional activities of the utility which may
18 have given rise to the need for this facility.

19 (e) Socially beneficial uses of the output of this
20 facility, including its uses to protect or enhance
21 environmental quality.

22 (f) Conservation activities which could reduce the
23 need for more energy.

24 (g) Research activities of the utility of new
25 technology available to it which might minimize

1 environmental impact.

2 (2) Land use impacts.

3 (a) Area of land required and ultimate use.

4 (b) Consistency with areawide state and regional land
5 use plans.

6 (c) Consistency with existing and projected nearby
7 land use.

8 (d) Alternative uses of the site.

9 (e) Impact on population already in the area;
10 population attracted by construction or operation of the
11 facility itself; impact of availability of energy from this
12 facility on growth patterns and population dispersal.

13 (f) Geologic suitability of the site or route.

14 (g) Seismologic characteristics.

15 (h) Construction practices.

16 (i) Extent of erosion, scouring, wasting of land--both
17 at site and as a result of fossil fuel demands of the
18 facility.

19 (j) Corridor design and construction precautions for
20 transmission lines or aqueducts.

21 (k) Scenic impacts.

22 (l) Effects on natural systems, wildlife, plant life.

23 (m) Impacts on important historic architectural,
24 archeological, and cultural areas and features.

25 (n) Extent of recreation opportunities and related

1 compatible uses.

2 (o) Public recreation plan for the project.

3 (p) Public facilities and accommodation.

4 (q) Opportunities for joint use with energy intensive
5 industries, or other activities to utilize the waste heat
6 from facilities.

7 (3) Water resources impacts.

8 (a) Hydrologic studies of adequacy of water supply and
9 impact of facility on stream flow, lakes and reservoirs.

10 (b) Hydrologic studies of impact of facilities on
11 ground water.

12 (c) Cooling system evaluation including consideration
13 of alternatives.

14 (d) Inventory of effluents including physical,
15 chemical, biological, and radiological characteristics.

16 (e) Hydrologic studies of effects of effluents on
17 receiving waters, including mixing characteristics of
18 receiving waters, changed evaporation due to temperature
19 differentials, and effect of discharge on bottom sediments.

20 (f) Relationship to water quality standards.

21 (g) Effects of changes in quantity and quality on
22 water use by others, including both withdrawal and in situ
23 uses; relationship to projected uses; relationship to water
24 rights.

25 (h) Effects on plant and animal life, including algae,

1 macroinvertebrates, and fish population.

2 (i) Effects on unique or otherwise significant
3 ecosystems; e.g., wetlands.

4 (j) Monitoring programs.

5 (4) Air quality impacts.

6 (a) Meteorology. Wind direction and velocity, ambient
7 temperature ranges, precipitation values, inversion
8 occurrence, other effects on dispersion.

9 (b) Topography. Factors affecting dispersion.

10 (c) Standards in effect and projected for emissions,
11 design capability to meet standards.

12 (d) Emissions and controls.

13 (i) Stack design.

14 (ii) Particulates.

15 (iii) Sulfur Oxides.

16 (iv) Oxides of Nitrogen.

17 (v) Heavy metals, trace elements, radioactive
18 materials and other toxic substances.

99 (e) Relationship to present and projected air quality
20 of the area.

21 (f) Monitoring program.

22 (5) Solid wastes impact.

23 (a) Solid waste inventory.

24 (b) Disposal program.

25 (c) Relationship of disposal practices to

environmental quality criteria.

(d) Capacity of disposal sites to accept projected waste loadings.

(6) Radiation impacts.

(a) Land use controls over development and population.

(b) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes.

(c) Analyses and studies of the adequacy of engineering safeguards and operating procedures.

(d) Monitoring. Adequacy of devices and sampling techniques.

(7) Noise impacts.

(a) Construction period levels.

(b) Operational levels.

(c) Relationship of present and projected noise levels to existing and potential stricter noise standards.

(d) Monitoring. Adequacy of devices and methods."

Section 16. Section 70-817, R.C.M. 1947, is amended to read as follows:

"70-817. Additional requirements by other governmental agencies not permitted after issuance of certificate-- exceptions. Notwithstanding any other ~~provision~~ of law, no state or regional agency, or municipality or other local government, may require any approval, consent, permit, certificate, or other condition for the construction,

operation, or maintenance of a ~~utility~~ facility authorized by a certificate issued pursuant to ~~the provisions of~~ this ~~act chapter~~; except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards. ~~Nothing in this act shall~~ This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such a facility."

Section 17. Section 70-818, R.C.M. 1947, is amended to read as follows:

"70-818. Revocation or suspension of certificate-- voiding of application. (1) A certificate may be revoked or suspended by the board:

~~(1)~~ (a) for any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the board's refusal to grant a certificate; or

~~(2)~~ (b) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

~~(3)~~ (c) for violation of ~~the provisions~~ any provision of this ~~act chapter~~, the regulations rules issued thereunder, or orders of the board or department.

(2) An application may be voided by the department:

(a) for any material false statement in the application or in accompanying statements or studies required of the applicant;

(b) for failure to file an application in substantially the form and content required by this chapter and the rules adopted thereunder; or

(c) for failure to deposit the filing fee with the application as required by section 70-806."

Section 18. Section 70-819, R.C.M. 1947, is amended to read as follows:

"70-819. Enforcement of act chapter by residents of state--statement of failure to enforce act--mandamus --private suits for damages. (1) A resident of this state, with knowledge that a requirement of this act chapter or a rule adopted under-this-act, under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or

refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this act chapter or a rule adopted under-this-act under it is not being enforced, the court may order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a utility person to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a utility facility. The remedies enumerated in this subsection do not exclude the use of any other remedy which may be available under the laws of the state."

Section 19. Section 70-820, R.C.M. 1947, is amended to read as follows:

"70-820. Adoption of rules--monitoring of facilities.

(1) The board ~~and department~~ may adopt rules implementing the provisions of this ~~act~~ chapter, including, but not limited to, rules:

- (a) governing the form and content of applications;
- (b) further defining the terms used in this chapter;
- (c) governing the form and content of long-range plans;
- (d) designed to reduce the rate of growth of energy demands by limiting promotional activities by energy suppliers;
- (e) any other rules the board considers necessary to accomplish the purposes and objectives of this chapter.

(2) The board and the department shall ~~have continuing authority--and--responsibility--for--monitoring~~ monitor the operations of all certificated facilities, for assuring continuing compliance with this ~~act~~ chapter and certificates issued hereunder, and for discovering and preventing noncompliance with this ~~act~~ chapter and such the certificates.

(3) The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to the possible future development of ~~an underground-utility~~ a facility employing geothermal resources, to comply with the following requirements:

- (a) Notify the department of the proposed action;
- (b) Submit to the department a description of the area involved;
- (c) Submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;
- (d) Submit to the department geological data reports at such times as may be required by the rules; and
- (e) Submit such other information as the board may require in the rules."

Section 20. Section 70-821, R.C.M. 1947, is amended to read as follows:

"70-821. Penalties for violation of ~~act~~ chapter--civil action by attorney general. (1) Whoever

(a) without first obtaining a certificate ~~of-site-and~~ facility required under section ~~4-70-804~~ 70-804, commences to construct or operate a utility facility ~~after--the~~ effective-date-of-this-act; or

(b) having first obtained a certificate ~~of-site-and~~ facility, constructs, operates or maintains a utility facility other than in compliance with the certificate; or

(c) violates any other provision of this chapter or any rule or order adopted thereunder, or submits false information in any report or application required by this chapter or rule or order adopted thereunder; or

1 ~~(e)~~ (d) causes any of the aforementioned acts to
 2 occur; shall be liable to a civil penalty of not more than
 3 ten thousand dollars (\$10,000) for each violation. Each day
 4 of a continuing violation shall constitute a separate
 5 offense. The penalty shall be recoverable in a civil suit
 6 brought by the attorney general on behalf of the state in
 7 the first district court of Montana.

8 (2) Whoever knowingly and willfully violates
 9 subsection (1) shall be fined not more than ten thousand
 10 dollars (\$10,000) for each violation or imprisoned for not
 11 more than one (1) year, or both. Each day of a continuing
 12 violation shall constitute a separate offense.

13 (3) In addition to any penalty provided in subsections
 14 (1) or (2), whenever the department determines that a person
 15 is violating or is about to violate any of the provisions of
 16 this section, it ~~shall~~ may refer the matter to the attorney
 17 general who may bring a civil action on behalf of the state
 18 in the first district court of Montana for injunctive or
 19 other appropriate relief against the violation and to
 20 enforce ~~the--act~~ this chapter or a certificate issued
 21 hereunder, and upon a proper showing a permanent or
 22 preliminary injunction or temporary restraining order shall
 23 be granted without bond. The department shall also enforce
 24 this chapter and bring legal actions to accomplish the
 25 enforcement through its own legal counsel.

1 (4) All fines collected shall be deposited in the
 2 state general fund."

3 Section 21. Section 70-822, R.C.M. 1947, is amended to
 4 read as follows:

5 "70-822. Grants, gifts and funds. The department ~~shall~~
 6 ~~have authority to~~ may receive grants, gifts and other funds
 7 from any public or private source, to assist in its
 8 activities under this ~~act~~ chapter."

9 Section 22. Section 70-823, R.C.M. 1947, is amended to
 10 read as follows:

11 "70-823. ~~Act~~ Chapter supersedes other laws or
 12 regulations. This ~~act~~ chapter supersedes other laws or
 13 regulations. If any provision of this ~~act~~ chapter is in
 14 conflict with any other law of this state, or any rule or
 15 regulation promulgated thereunder, this ~~act~~ chapter shall
 16 govern and control, and ~~such the~~ other law, rule or
 17 regulation shall be deemed superseded for the purpose of
 18 this ~~act~~ chapter."

19 Section 23. Amendments not indicative of legislative
 20 interpretation of 1973 act--savings clause. The amendments
 21 made by this act, or proposed to be made if this act should
 22 not be enacted, do not indicate an expression of legislative
 23 intent as to the interpretation of any provision of the
 24 Montana Utility Siting Act of 1973 as it existed prior to
 25 the introduction or enactment of this act. This act shall

1 not affect the outcome of any judicial or quasi-judicial
2 administrative proceeding commenced prior to the effective
3 date of this act.

4 Section 24. Applicability. The amendments made by
5 this act apply only to applications received by the
6 department after January 1, 1975.

7 Section 25. This act is effective on its passage and
8 approval.

-End-

he Natural Resources Committee met on February 18, 1975, at 10:30 a.m. in room 437 with Chairman Bradley presiding and all members present to hear testimony on the following bills.

B 581 REP. BARDANOUE, the chief sponsor, stated this was a revision of the Utility Plant Siting Act which was passed by the last legislature. He said it has been a landmark piece of legislation but there are certain places that need revision or clarification. Rep. Bardanouv went through the bill and explained the various amendments. He said this would bring the proposed Burlington Northern operation in McCone County under the Utility Plant Siting Act.

ILL BROWN, Jr., Garfield-McCone Legislative Association, was the next proponent speaker and his testimony is exhibit 1.

HARLES YARGER, Garfield-McCone Legislative Association, was the next speaker and his testimony is exhibit 2.

ARY WICKS, Director of the Department of Natural Resources, said this would lower the minimum so that smaller plants would also be covered by this act. He said it was not only the Burlington Northern's proposed plant in McCone County that concerned them but also other possible developments. He said WESCO Resources had an application in for 60,000 acre feet of Fort Peck water to be used in conjunction with lignite coal and others had also shown interest. This bill would give their department a handhold on these developments and enable them to do the things the people of the area wanted.

IT MULLER, Northern Pacific Resource Council, was the next proponent speaker and his testimony is exhibit 3.

EP. MELOY spoke next and his testimony is exhibit 4.

AMENDERS

OB CORETTE, Montana Power Co., stated some of the revisions were good and proper but some they would like to see changed. He passed out copies of their suggested amendments to the committee members (exhibit 5) and explained these amendments.

ARD SHANAHAN, Dreyer Bros., Inc., was the next speaker. He passed to the committee members copies of their suggested amendments (exhibit 6) and discussed them. He said this was a specific plan to bring them under the Plant Siting Act. He said he felt they were a sweet cherry being grafted onto a sour crabapple tree. He said they were a free market situation and so different than the utilities. He said they own the surface as well as the mineral rights below and are going to make fertilizer on the site (mining coal only for that use) and sell it on the open market.

ENE PHILLIPS, Pacific Power and Light, stated the subject had been covered by the other amenders, and supported the amendments proposed by Montana Power. He said they liked the change in KVs from 69 or less to

more than 69 KVs and the change in upgrading a line. He felt two years was unduly long.

PETER C. PAULY, Montana-Dakota Utilities, stated his company endorses the comments of Mr. Phillips and Mr. Corette and the Montana Power amendments.

REP. BARDANOUVE in his rebuttal stated if the committee felt these were strong objections they should have heard those on the original bill. He said he did not want unfair legislation--he wants to be fair to industries while protecting the people's rights to clean air, water and a land they can be proud of. With big business, he said, have to have big government. He stated he was not opposed to fertilizer plants--as a farmer he needs it and it is getting costlier and scarcer; but he said it was not fair to have the people in McCone County have severe impacts just so other farmers can have fertilizer. He said he would have to oppose the concept of removing conversion plants from the bill.

Chairman Bradley assigned a subcommittee to study the bill--Reps. Huennekens, Barrett and Meloy.

Questions were asked by the committee.

Also signing witness sheets were:

Rod Hanson, Montana Associated Utilities, supporting.

Mikal Kellner, League of Women Voters, supporting, and her written testimony is exhibit 7.

Joseph J. Martin, Plumbers and Fitters Local 139, opposing, and his written testimony is exhibit 8.

William A. Christman, Local Union 122, IBEW, opposing, exhibit 9

Robert O. Geier, Bricklayers Local Union #3, BMPIU, opposing, his written testimony is exhibit 10.

A copy of the Environmental Quality Council report on HB 581 is exhibit 11.

HB 473 REP. FAGG, the chief sponsor, said this is a similar bill to the one he introduced a year ago, which is to adopt rules to promote conservation and efficient use of energy in the state building code. He said times have changed in the past year and we are looking a little differently at the energy picture. He said that as an architect he knows there are many ways we can build and design buildings to save energy--simply orientation of a building (how it relates to the sun and wind, nestling it into the topography); and other ways that would cost more initial money outlay like using certain materials on the outside surface like masonry, metal, glass, and having a reflective roof; even landscaping--trees and grass--plays an important role. Rep. Fagg read from the EQC report on this bill which is exhibit 1. He stated 20% of our energy consumption is in heating and cooling buildings. He left three booklets for the committee to look over: "Energy in Building and Design" by the American Institute of Architects.

Conservation in Buildings" and "Energy Conservation in New Building Design" by the American Society of Housing, Refrigeration and Air Conditioning Engineers. Rep. Fagg also read a letter from Hugo Eck, professor of the School of Architecture at MSU, in which an amendment was suggested. A copy of this letter is exhibit 13.

As there were no other proponents and no opponents the meeting was opened to questions from the committee. In reply to a question Rep. Fagg said this would only cover public buildings.

HJR 29 JOHN VINCENT, the chief sponsor, stated this need for public access to public lands was a number one issue in the campaign. People are very concerned about the increasing difficulty of access--due to closing of long used roads by new purchasers of private lands (often out-of-staters). He said Reps. Leubeck and Huennekens both have bills on public access and he did not want his resolution to be thought of as a substitute for that legislation; however, if both passed there would still be a need for this study.

REP. LEUBECK stated he was very interested in this legislation. He said the Big Hole area of Butte was an example where roads were being closed to the public and there were lots of doubts as to the status of these roads.

REP. HUENNEKENS stated he rose in support. He said if his HB 98 should not pass, this study would keep alive a recognition and awareness that we do have a problem.

REP. ANDERSON stated he was very much in favor of this study.

BILL ROMINE, representing the Motorcyclists, stated he hoped his support would not harm the bill. His testimony is exhibit 14.

EVERETT SNORTLAND, Farm Bureau, spoke next neither for or against the bill and his testimony is exhibit 15.

Rep. Vincent in his rebuttal said if this study is undertaken they would want to have the broadest range of public input that could be obtained.

Questions were asked the the committee.

EXECUTIVE SESSION

HJR 29 Rep. Meloy moved to amend on page 1, line 19, by striking the words "appoint the appropriate standing committee" and insert in lieu thereof the words "assign to the appropriate subcommittee" and conform the title; and as so amended do pass. Motion carried unanimously with those present (absent were Reps. Day, Barrett and Stone).

HB 473 The amendment in Mr. Fagg's letter from Mr. Eck was considered and Rep. Meloy moved that on page 1, lines 24 and 25 and on page

Ex. 1

NAME Bill Brown Jr. Bill No. 58
ADDRESS Sand Springs Mont Date 2-18-
WHOM DO YOU REPRESENT? Garfield-McCone Legislation
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MEMBERS OF THE NATURAL RESOURCES COMMITTEE AND INTERESTED CITIZENS. MY NAME IS BILL BROWN JR. FROM SAND SPRINGS MONTANA, I WOULD LIKE TO THANK THE MEMBERS OF THIS COMMITTEE FOR ALLOWING ME TO EXPRESS MY VIEWS AS A CONCERNED RESIDENT OF THE IMPACT AREA OF THE PROPOSED CIRCLE WEST PROJECT AND ALSO AS A DIRECTOR OF THE GARFIELD-MC CONE LEGISLATIVE ASSOCIATION. THIS ASSOCIATION CONSISTS OF SEVENTY-TWO FARMER AND RANCHERS RESIDING IN MC CONE AND GARFIELD COUNTIES.

IN THE AUDIENCE THIS MORNING WE HAVE 10 MEMBERS WHO ARE CONCERNED ENOUGH TO BE HERE AND EXERT WHAT INFLUENCE THEY CAN. THEY ARE CITIZENS WHO ARE INVOLVED IN OUR AREA AND WITH THE DEVELOPMENT OF OUR GREAT STATE OF MONTANA.

THE MAGNITUDE OF A DEVELOPMENT SUCH AS THIS CANNOT HELP BUT STAGGER THE IMAGINATION OF A RURAL COMMUNITY SUCH AS OURS.

THE COMBINED POPULATION OF BOTH COUNTIES IS 4550 PEOPLE THE LABOR FORCE REQUIRED FOR CONSTRUCTION PLUS THE PEOPLE WHO WILL BE ON THE SCENE IN THE VARIOUS SUPPORTING SERVICES, SUCH AS LAUNDRIES, GROCERY STORES, SCHOOLS ETC. WILL PROBABLY OUT NUMBER OUR EXISTING POPULATION.

~~the concept of~~
WE SUPPORT H.B. 581 BECAUSE WE FEEL IT CONTAINS THE PROVISIONS TO ALLOW US THE TIME TO PLAN OUR FUTURE. IT WILL REQUIRE THE DEVELOPMENT COMPANIES TO PRESENT US FACTS AS TO THE TYPE AND MAGNITUDE OF THEIR PROPOSED PROJECT.

THIS IN TURN MAKES PERTINATE FACTS AND FIGURES AVIALABLE TO EVERYONE SO THAT WE WILL HAVE THE OPPORTUNITY TO PLAN OUR DESTINY.

IN ESSENCE, WE ARE TOTALLY UNPREPARED FOR ANY TYPE OF EXPANSION. AT THIS TIME THERE IS NO WAY WE CAN PREPARE OURSELVES BECAUSE WE DO NOT HAVE ANY INFORMATION AS TO THE CONSEQUENCES INVOLVED NOR THE NEEDS REQUIRED.

WHAT WE NEED IT TIME, FACTS AND PLANS. WE WANT THE ASSURANCE BY STATUTE THAT WHOEVER DEVELOPS OUR AREA OR FOR WHAT EVER PURPOSE, WE ARE PROPERLY INFORMED SO THAT WISE DECISIONS MIGHT BE REACHED.

WE DO NOT MEAN TO MINIZE THE ENERGY NEEDS OF OUR NATION. WE REALIZE THE ~~ENERGY NEEDS~~ *Potential Adverse Effects*, IF WE ARE DEPENDENT ON FOREIGN NATIONS TO SUPPLY US WITH THESE NEEDS.

BUT BY THE SAME TOKEN WE CAN NOT AFFORD TO UNDERESTIMATE OUR NEEDS AS A NATION FOR FOOD AND FIBER. NEITHER CAN WE IGNORE THE RIGHTS AND NEEDS OF THE RESSIDENTS OF MC CONE AND GARFIELD COUNTYS.

WE BELIEVE THAT CAREFULLY PLANNED DEVELOPMENT CAN BE COMPATIBLE FOR ALL INVOLVED.

the concepts of
WE ENDORSE H.B. 581 BECAUSE WE FEEL IT PROVIDES THE NECESSARY FRAME WORK FOR OUR COMMUNITY TO BECOME INFORMED AND IT GIVES US THE AVENUES WE NEED FOR PREPARATION.

NAME Charles Hanger Bill No. _____
ADDRESS Cisco, Montana Date 2/1
WHOM DO YOU REPRESENT? Garfield-McCona Legislative
SUPPORT yes OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Members of the committee. My name is Charles Yarger. I am a farmer-rancher from McCone county. First of all, I would like to thank the members of the committee for allowing me the opportunity to speak as a concerned individual.

I also represent the Gar.-McCone Legislative Association and would like to concur with the testimony of my colleague, Mr. Brown.

However, I would like to delve more specifically into those areas that we as farmers and ranchers are concerned with.

McCone county has coal reserves that total 24.5 billion tons. These deposits are contained within two major formations. The Redwater River containing 642 million tons under 24,181 acres and the Weldon-Timber Formation containing 724 million tons under 25,565 acres.

What we wish to portray is the potential problem areas that may arise if these tremendous coal deposits are developed in any other than a carefully planned and well executed manner.

McCone county has a population of 2875 people. Circle, the county seat, has a population of 964 people. One proposal estimates that a construction force of 2000 individuals will be needed for the construction of BMS plant and that a permanent work force of 200 maybe required to maintain

Circle has a 20 bed hospital staffed by one doctor.

We have one social worker that covers McCone, Garfield and Prairie

Circle has just recently completed construction of a new grade high school. According to High School Supt. Glen Mader, our schools are presently operating at 84 % capacity. A problem with school facilities could very easily arise. With our schools presently operating at 84% capacity where will the students attend schools? We do not know if they will be provided with facilities at the plant site or whether we will be required to furnish the schools.

one post office and one grocery store and a schools for grades 1-6. The entire community has a population of less than 100.

The present availibility of housing in Circle is critical to say the least. We do not have the facilities to accomodate 10 families let alone hundreds or

We have a single well which provides Circle with water. This well was just drilled last year and is inadequate for the present needs of Circle.

We are not singling our BN as the culprits in this industrial development. We are equally concerned about Wesco Resources, Tennaco, Chevron, Shell Oil and Mobil who are among the applicants who have applied for an in access of 370,000 acre feet of water from Fort Peck to be used for industrial purposes.

Through a carefully planned and well executed study conducted by an independent agency we feel we must insure that both the benefits and the consequences of all proposed coal conversion facilities be carefully assessed.

Our organization has been in contact with most of the related state agencies and with BN, at this time no one we have been in contact with knows the type of information we feel we need to know in order to make intelligent decisions concerning the destiny of our future.

As well as these previously mentioned problems we are also concerned with various facilities directly related to this industrial development. We do not know where the railroad spur will go. Will it go from Circle to the plant, from Brockway to the plant or from somewhere between Circle and Brockway to the plant?

What type and how many access roads and highways will be required?

What will be the environmental impact of a 4 foot pipe line from Ft. Peck to the plant site?

What will be the impact of transmission lines carrying power into the area?

Another area that we as a local community are very concerned with is the potential problems of reclamation and saline seep. In McCone county we predict

on the Dreyer Bros. ranch there could develop an extensive salinity problem. We feel that the studies conducted concerning this problem area are inadequate to justify an irrigation system of this magnitude.

We feel it very important that the assessment concerning this decision be done in such a manner so as to involve the local people of this area in the decision making process.

As we understand the ~~Utilities Siting Act~~ ^{HB 581} there are provisions for local ^{input} ~~impact~~ through the use of public information hearings.

This act also requires that a facility under the act submit a plan each year. This would allow our community to plan for this type of development.

If these coal conversion facilities are not under the jurisdiction of the agency, D.N.R, planning and regulation could prove to be haphazard and inefficient for both the people of the area and the company involved in the development.

For these reasons we feel we must have an agency with authority to disapprove or amend any proposals for development, and only under the provisions of HB 581 will we have the opportunity and time to study the proposals and make intelligent decisions based on sound information.

NAME Gary J. Wicks; Ted J. Doney Bill No. 5

ADDRESS 32 S. Ewing Date 2/18/

WHOM DO YOU REPRESENT? Dept. Nat. Resources & Cons.

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Leo Muller Bill

ADDRESS Bellevue, Montana Date

WHOM DO YOU REPRESENT? Abraham Plains Resource

SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I rise in support of House Bill 581.

I am going to address myself to only two amendments: section 7, lines 9 to 19; and on page 24, section 13, lines 1 to 10. Both of these amendments have to do with the ten year plan.

Seven corporations (and five of these are partners in the project) have ~~not~~ submitted these plans. The Department of Energy has not received plans from the others, fifteen, who have or plan to build gas or other plants in Montana. I am not pointing out to show the companies are trying to subvert the law. As the law is, it is unclear as to whom is expected to have a ten year plan. Such forewarning for a community there is created a situation where assessments are rushed and where things polarize needlessly.

I do stress the need of these ten year plans. We urge the passage of this legislation.

NAME

Meloy

REP. MELOY

ADDRESS

WHOM DO YOU REPRESENT?

SUPPORT ☒ X ☐ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Along with Mr. Bardanouve and Mr. Huennekens we are
this act. I have a strong feeling about it.

Mr. Bardanouve said this is the most important piece
he has ever sponsored. We wrote the bill almost in a vacuum
changes would be needed after the act was experienced. I di
I would be able to vote on those amendments. I do have a co
with two amendments but will discuss these later with the su

This act has proven indeed the most important piece
not only that Mr. Bardanouve has sponsored but that anyone h
A decision on Colstrip 3 and 4 will be going on--it will be
the philosophy of this act.

Amendments relate more with procedure to make the act

NAME

B. G. Grello

ED

ADDRESS

1300 Montana

DA

WHOM DO YOU REPRESENT?

Montana

SUPPORT

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Be amended in the introduced bill as follows:

1. Amend on page 3, lines 4 - 6
Strike: "each , unit, or other facility"
Reinsert: "any energy generating and conversion"
2. Amend on page 4, line 7
Strike: "each"
Reinsert: "an"
3. Amend on page 5, line 21
Strike: "each pipeline"
Reinsert: "a gas or liquid transmission line"
4. Amend on page 6, lines 9 and 10
Strike: "substations, including distribution substations"
5. Amend on page 7, lines 12 - 16
Strike: "all of (d) the relocation or upgrading of a facility defined by subsection (3) (b) or (c), including to a design capacity covered by subsection (3) (b), except term does not include normal maintenance or repair of a facility."
6. Amend on page 9, lines 3 through 9
Strike: all of "(4) The board may adopt reasonable rules exemptions from this chapter for the relocation, reconstruction, upgrading of a facility that would otherwise be covered by this chapter and that is unlikely to have a significant environmental impact by reason of length, size, location, availability of way, or construction methods."
7. Amend on page 9, lines 10 through 12
Strike: all of "(5) A certificate is not required under this chapter for a facility under diligent on site physical construction or operation on January 1, 1973."
8. Amend on page 10, line 17
Strike: "(a)"
9. Amend on page 11, lines 3, 5, 7, 9 and 15
Reinsert: "(a) (b) (c) (d) (e) for (i) (ii) (iii) (iv)"
10. Amend on page 11, line 18
Reinsert: "(b) for (ii)"
11. Amend on page 11, line 21 through 23
Strike: all of "(b) An application may consist of one or more applications for two (2) or more facilities in combination, such as a"

12. Amend on page 11, line 24

Following: "(2)"

Strike: "(a)"

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13. Amend on page 12, lines 20 through 23

Strike: "If an application consists of a combination (2) or more facilities, the filing fee shall be the total fees based on the estimated cost of each facility considered separately."

14. Amend on page 12, lines 24 and 25 and
page 13, lines 1 through 11

Strike: all of "(b) If a certificate is issued by the department for the proposed facility, immediately upon completion of the facility the applicant shall give a notice of completion to the department. As soon as possible after giving the notice of completion, the applicant shall file an affidavit with the department stating the actual cost of the facility in such detail as the department may require to determine whether a further fee is required. If the actual cost exceeds the estimated cost, the applicant shall pay a further fee for the difference based upon the declining balance method provided in subsection (2) (a) of this section. No further fee is required, however, if it is computed to be five hundred dollars (\$500)."

15. Amend on page 14, lines 19 through 22

Strike: "If an amendment to an original application is a substantial change of the original application, the amendment shall be considered as a new application and a filing fee shall be required."

16. Amend on pages 14 and 15

Reinsert: "(7) The board may waive compliance with subsection (1) of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section."

"(8) The board may, in its discretion, waive the requirement of filing an application where utility facilities are being relocated pursuant to sections 32-2414 through 32-2416, R.C.M. 1981, if it is satisfied after an examination of the environmental impact statement filed pursuant to chapter 65 of Title 69, R.C.M. 1981, that such relocation will not significantly affect the environment."

17. Amend on page 16, lines 9 through 19

Strike: "If the application is for a facility not previously listed or proposed in a long-range plan submitted by the applicant to the department at least six (6) months before the application is filed."

18. Amend on page 22, lines 23 through 25
and on page 23, lines 1 through 3

Reinsert: "A certificate is not required under the
facilities under construction or in operation on the
However, a certificate must be obtained for associated
upon which construction has not commenced before the
subject to the waiver provisions of this subsection.

19. Amend on page 33, line 4

Following: "applicant"

Strike: ";

Insert: ", provided that such statements were
intentional;"

20. Amend on page 36, line 23

Following: the second "or"

Insert: "deliberately and intentionally"

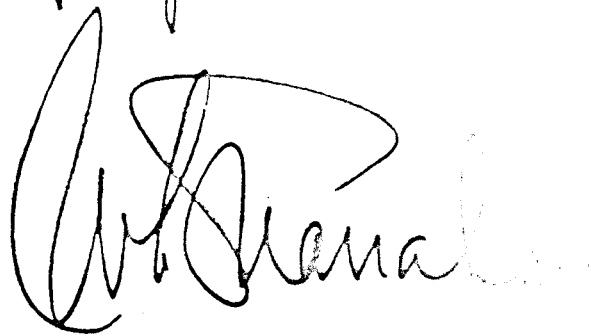
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NAME WARD SHANAHAN Bill # _____
ADDRESS FIRST NAT'L BANK BLDG - HELENA Date _____
WHOM DO YOU REPRESENT? DREYER BROS. INC.
SUPPORT _____ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Please find prepared statement
attached!



Utilities regulated

Fertilizer on site - compact sales

Police power shouldn't apply as long as is used
on own land, injury to neighbor.

Improper exercise of

AMENDMENTS PROPOSED TO HOUSE BILL
BY DREYER BROTHERS INC., A MONTANA CORP.

THE TAXPAYER RESPECTFULLY SUBMITS TO THE
NATURAL RESOURCES OF THE 1975 MONTANA
FOLLOWING PROPOSED AMENDMENTS TO HOUSE
GENERAL REVISION ON THE MONTANA UTILITY

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Proposed Amendment No. 1. Amend
introduced bill on page 2, line 13, by
"and public need".

Proposed Amendment No. 2. Amend
introduced bill on page 8, line 14, by
"and the public need".

Proposed Amendment No. 3. Amend
introduced bill on page 11, beginning
all of the language between line 24 on
on page 13 and inserting in lieu thereof
figures as follows:

"(2) (a) The department of natural
entitled to a fee for the services
any qualified sub-contractor retain
investigations and develop the in
with respect to the certificate of
ibility applied for hereunder and
follows:

(1) setting forth an outline of work
to the departments determining

(2) describing in sufficient detail
used in doing the work here

be accountable
for fees

"utility" before the word "facility"; and again

On page 20, at line 7, by inserting the word "utility" before the word "facility"; and again

On page 20, at line 24, by deleting the word "the" and inserting the words "a utility" before the word "facility"; and again

Proposed Amendment No. 5. Amend section 2 of the bill introduced on page 22, at line 10, by striking the word "the" and inserting the word "a" and by inserting the word "utility" before the word "facility".

Proposed Amendment No. 6. Amend section 3 of the bill introduced on page 25, on line 5, by striking the word "or person", and again on line 6, by striking the word "persons", and again on line 15, by striking the word "person".

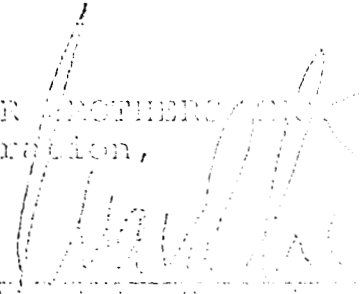
And, as so amended that House Bill 581 DO PASS.

RESPECTFULLY submitted.

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AVAILABLE

DREYER BROTHERS, INC.
corporation,

By


Ward A. Sheldahl
Registered Lobbyist

- (3) a system of periodic reports of work and expenditures made for the account of the
- (4) prescribing fees to be paid by a person filing an application hereunder, which shall be three percent (3%) of any estimated cost of a facility up to one million dollars plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000.00); plus one-half of one percent (1/2%) of any estimated cost over twenty million dollars (\$20,000,000.00) and up to one hundred million dollars (\$100,000,000.00); plus one-quarter of one percent (1/4%) of any estimated cost over one hundred million dollars (\$100,000,000.00) and up to three hundred million dollars (\$300,000,000.00); plus one-tenth of one percent (1/10%) of any amount of estimated cost over three hundred million dollars (\$300,000,000.00).

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(b) It is the intent of the legislature that the department assessed under this section shall be authorized to gather data and information necessary to prepare an environmental impact statement for any project. The department must determine within thirty (30) days whether it is necessary to compile an environmental impact statement and assess a fee as prescribed in this section. If it is determined that a fee is necessary, the department shall notify the applicant of the fee and the estimate of the fee, which shall be ten (10) days to deposit the fee. The applicant shall have ten (10) days to deposit the fee. If the fee of such estimated fee in each installment is not paid with sufficient sureties to guarantee the balance, as work progresses in accordance with the rules of the department. All data gathered by the department or under its authority shall be made available to any other state or federal agency dealing with the environmental subject matter. The purpose is to minimize the cost of preparing environmental impact reports by such agencies and to coordinate the efforts of all such agencies. The fee shall be assessed if the department determines that the project will have a significant impact on the environment.

Proposed Amendment No. 4.

introduced bill on page 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

- (3) a system of periodic reports of work progress and expenditures made for the account of the applicant.
- (4) prescribing fees to be paid by a person filing an application hereunder, which shall not exceed three percent (3%) of any estimated cost of a facility up to one million dollars (\$1,000,000.00); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000.00); plus one-half of one percent (1/2%) of any estimated cost over twenty million dollars (\$20,000,000.00) and up to one hundred million dollars (\$100,000,000.00); plus one-quarter of one percent (1/4%) of any amount of estimated cost over one hundred million dollars (\$100,000,000.00) and up to three hundred million dollars (\$300,000,000.00); plus one-tenth of one percent (1/10%) of any amount of estimated cost of a facility over three hundred million dollars (\$300,000,000.00).

(5) It is the intent of the legislature that the fee assessed under this section shall only be used to gather data and information necessary to compile an environmental impact statement hereunder. The department must determine within thirty (30) days whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this section. If it is determined that a fee is to be assessed the department shall notify the applicant of its determination and the estimate of the fee, after which the applicant shall have ten (10) days to deposit ten percent (10%) of such estimated fee in cash accompanied by a bond with sufficient sureties to guaranty payment of the balance, as work progresses in accordance with the rules of the department. All information developed by the department or under its supervision shall be made available to any other state or federal agencies concerned with the environmental evaluation of the facility so as to minimize the cost of preparing necessary environmental reports by such agencies and to insure co-ordination of the efforts of all such agencies. No fee may be assessed if the department intends only to file a negative declaration stating that the proposed project will not have a significant impact."

Proposed Amendment No. 4. Amend section 9 of the

introduced bill on page 19, at line 7, by inserting the word

ADDITIONAL PROPOSED AMENDMENT

to

HOUSE BILL 581

BY DREYERS BROTHERS INC.

Amend on page 13 at line 11 by inserting the following paragraph:

(c) The department shall have power to contract with a potential applicant under this act, in advance of filing of a formal application, for the development information or provision of services required hereunder. Payments made to the department under such contract shall be credited against the fee payable hereunder.

NAME Eric Phelps Bill No. 200

ADDRESS 10111, York Date 1/1

WHOM DO YOU REPRESENT? For the Power Line

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME PETER C. PAULY Bill No. 1
ADDRESS 833 N MAIN HELENA, MT. Date _____
WHOM DO YOU REPRESENT? MONTANA-DAKOTA UTILITIES
SUPPORT _____ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Support Amendments proposed
by The Montana Power Company

NAME Rod Hanson Bill #
ADDRESS Fairfield, Mont. Date .
WHOM DO YOU REPRESENT? Montana Associated Vit
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We support the general intent
of this bill and would urge the
passage of it - after fair consideration
and action on the proposed amendments

NAME W. Paul Keller Bill No.

ADDRESS 319 Mainence Date

WHOM DO YOU REPRESENT? League of Women

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

League of Women Voters
44th Session
February 1975

The Montana League of Women Voters strongly supported the bill that established the Montana Utility Siting Act in 1973. We also support the amendments in HB 581. These amendments are mainly in the nature of "house keeping" since they concern themselves with further clarification of the act. The LWV appreciates the elaboration the considerations to be made by the Board of Natural Resources (Pg 21). Such clarification of the intent of the law should do much to expedite judicial review.

NAME William A. Christman Bill No. 581
ADDRESS 3011 6th Ave. So. Great Falls Date 2-18-75
WHOM DO YOU REPRESENT? Local Union 122, I.B.E.W.
SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am opposed to this Bill to Amend the Utility Siting Act because the original Act has not had sufficient time to determine if it merits expanding. This Act will further restrict expansion of Montana's Industrial base at a time we are experiencing high unemployment and high taxes. We are in favor of clean air and clean water but do not favor permits being turned down by the Dept. of Natural Resources ~~and~~ decision of need.
✓

NAME ROBERT O. GEIER Bill No. 581
ADDRESS 610-46th ST. SE. GT. FALLS Date 3/18/75
WHOM DO YOU REPRESENT? BRICKLAYERS LOCAL UNION #3. BARBUI.
SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This bill would certainly curtail
ANY GREAT INCREASE FOR INDUSTRIAL GROWTH
TO THE STATE.

Unemployment is high now. IT would
ALSO EFFECT THE TAXES TO THE STATE.

ANY CONSTRUCTION OF MEAT PACKING
PLANTS, LOGGING PLANTS, OR OTHER MANUFACTURING
FACILITIES WHICH WOULD BE HELPFUL TO THE
GROWTH OF THE STATE.

THE STATE HAS RIGID ENVIRONMENTAL STANDARDS
AND WHEN THEY ARE MET, WE WOULD NOT
REQUIRE MORE.

THOMAS L. JUDGE
SIGNATURE REPRESENTATIVE
BEN BROWN

SENATE MEMBERS
SEN. ELMER FLYNN, CHAIRMAN
SEN. GEORGE DARROW
SEN. GEORGE MCCALLUM
SEN. GORDON MCGOWAN

HOUSE MEMBERS
REP. A. L. AINSWORTH
REP. CROTHY BRADLEY
REP. LARRY FASBENDER
REP. THOMAS O. HAGER

APPOINTED MEMBERS
MR. THOMAS J. LYNALON
MRS. HARRIET MAPPLE
MR. CALVIN S. ROBINSON
DR. WILLIAM C. WALTER

February 18, 1975

Prepared For: House Natural Resources Committee

Prepared By: Legislative Unit, Environmental Quality Council

HOUSE BILL 581

House Bill 581 proposes several amendments to the Utility Siting Act (70-801 et seq.). Many of the amendments are simply rephrasings of the present Act, and will not be mentioned specifically in this report. The substantive changes are as follows:

Definition of "Facility"

Section 70-803 defines "facility" for the purposes of the Act. HB 581 revises that definition in many respects:

- p. 3, lines 5 & 6; oil and gas refineries are excluded from the definition of facility, and are therefore not covered by the Act.
- p. 3, lines 14 & 15; plants capable of producing twenty-five million cubic feet per day of gas are included; formerly only plants with capacity of one hundred million cubic feet per day were covered;
- p. 3, line 19; plants capable of producing twenty-five thousand barrels of liquid hydrocarbons per day are included; formerly only plants with a capacity of fifty thousand barrels per day were covered;
- p. 3, lines 24 & 25; additions to uranium enrichments facilities are included.
- p. 4, lines 2 thru 6; all plants capable of "utilizing" five hundred thousand tons of coal per year are now included; this seems to include all uses of coal;
- p. 4, lines 7 thru 25; p. 5, lines 1 thru 17; the definition of electric transmission line is simplified; formerly the definition involved various combinations of carrying capacity and length. Now, all transmission lines of more than 69 kv, and more than 10 miles in length, and all lines of more than 230 kv, are covered. The effect of this change is that transmission lines of between 69 and 230 kv. and less than 10 miles in length are no longer covered. Such lines are covered under the present Act.

p. 5, lines 20 thru 25; water pipelines, as from a facility are included; this would include water lines supplying facilities (such as gasification plants) which use large volumes of water; lines within the state which supply or carry products from plants located outside the state are also included;

p. 6, line 6; underground coal gasification facilities are included.

p. 6, lines 9 & 10; definition of "associated facilities" is expanded to include substations, storage ponds, reservoirs.

Definition of "Commence to Construct"

p. 7, lines 4 & 5; fracturing of underground formations for gasification facilities is included;

p. 7, lines 12 thru 16; relocation or upgrading of existing transmission lines or pipelines is included; thus, if a line which was built prior to the effective date of the Act is now relocated or upgraded, this activity will be covered.

Exemptions for existing facilities

p. 9, lines 3 thru 9; the board is given authority to adopt rules for exempting relocation, reconstruction, etc. of existing facilities where it is determined that such activity will not have a significant environmental impact. This corresponds to the deletion on p. 15, lines 5 thru 11 which formerly gave the board authority to waive application requirements for such activities.

p. 9, lines 10 thru 12; facilities under construction or in operation as of January 1, 1975, do not require certificates. This addition corresponds to the deletion on p. 22, lines 23 thru 25.

Surcharge--Tax

p. 9, line 25; the department of revenue, rather than the board of equalization, will report to the state treasurer the amounts of surcharges collected.

p. 10, line 7; a tax on coal conversion is called for, in addition to the present requirement for taxes on gasification, liquefaction, and uranium enrichment.

Application Procedures

p. 10, lines 17 thru 23; it is no longer required that applicants for certificate of environmental compatibility and public need file their application with the department two years prior to the anticipated commencement of construction. However, applicants must await the board's evaluation of the application before commencing construction, and the board may take up to two years performing that evaluation (see section 7, p. 15)

p. 11, lines 21 thru 23; joint applications for more than one facility are allowed; in the case of such joint applications, the filing fee shall be the total of the separate fees (p. 12, lines 20 thru 23), and the time allowed for the board's evaluation report will be the longest of the times

- 11, line 25; p. 12, line 1; fees will be paid to the department, rather than to the state general fund.
- 12, lines 24 & 25; p. 13, lines 1 thru 11; under the present Act, filing fees are based on a percentage of the estimated cost of the proposed facility. This amendment provides that, in addition, after completion of the project, the actual construction costs will be reported to the department, and if they exceed estimated costs, an additional fee will be required.
- 14, lines 19 thru 22; if applications for amendments to an application or a certificate involve substantial changes to the original application, such an application for amendment will be considered a new application, and new filing fees will be required.

valuation of Applications

- 15, lines 19 thru 25; p. 16, lines 1 thru 4; under the present Act, the department was to perform intensive studies of all applications. The department had either six hundred days, or one hundred eighty days to complete the study, depending on the nature of the project. These time limits are changed to two years for generating plants and for transmission and pipelines more than thirty miles in length, and one year for lines thirty miles or less in length.
- 15, lines 9 thru 15; if the proposed project was not listed in a long-range plan submitted under section 70-814 (p. 24) the time limits given above are extended to three and two years, respectively.
- 17, line 1; commenting agencies may advise modification, as well as granting or denying of certificates.
- 18, lines 22 & 23; under the present Act, the board must hold a hearing on all applications for certificates. This amendment requires the board to make its findings within ninety days after completion of the hearing.
- 19, lines 5, 6 & 13; this is not an amendment, but the language, which appears in the present Act, is unclear. This section (70-810) says that the board may not grant a certificate "unless it shall find and determine (d) each of the criteria listed in section 70-816." Section 70-816 (p. 27 et seq.) lists a wide variety of factors to be considered in evaluating long-range plans, but § 816 does not give standards or prerequisites to be met. For example, § 816 (3)(j) lists "monitoring programs" as a factor to be considered. Thus, Section 810 requires that the board "find and determine" monitoring programs. It is not clear what this means.
- 20, line 9; certification is required from appropriate federal agencies that federal air and water standards will be met. The present Act requires certification by state pollution control agencies. This amendment will make sure that activities regulated by federal but not state authorities will also be covered.

- p. 20, lines 23 thru 25; p. 21, lines 1 thru 10; factors to be considered in determining the "public interest" are set out. These factors include all those factors required for granting of certificates under section 70-810 (p. 19, et seq.), plus the benefits to the applicant and the state, the effects of economic activity resulting from the project, the impacts on public health, welfare and safety, and other factors deemed relevant by the board. (Note; p. 21, line 3: "(b)" should be "(h)").

Rule-Making--Review

- p. 11, line 1; the board's rule-making authority is expanded; the board, as well as the department, may prescribe requirements for the content of applications. There are several other instances in which the board is given expanded rule-making powers where formerly only the department had such authority:
- p. 14, line 16; determining the form of applications for certificates;
- p. 25, line 19; determining requirements for content of long-range plan reports under section 70-814.
- p. 35, lines 1 thru 12; the board is given general rule-making authority over the form and content of applications and long-range plans, definitions of terms, limitation of promotional activities by energy suppliers, etc. These changes all specify that the board may make rules, and the department may issue orders. Rules, generally, are statements of policy of general applicability, and must be promulgated under the provisions of the Administrative Procedures Act (82-4201, et seq.). The definition of "order" is less clear, but may include informal directives as well as formal rules. Since this bill distinguishes between rules and orders, it may be read to mean that the department is precluded from issuing formal rules under this Act.
- p. 23, lines 12 thru 23; procedures for judicial review are deleted. Lines 23 thru 25 already provide that APA procedures be followed. Therefore, the material deleted by this amendment was for the most part redundant.

Long-range Plans

- p. 24, lines 18 thru 20; all persons contemplating construction of facilities must file long-range plans to the department. Formerly, only utilities were required to do so.

Revocation of Applications

- p. 33, lines 1 thru 9; under the present Act, a certificate can be revoked by the board for the reasons set out under § 70-818 (p. 32). This amendment provides that applications for certificates may be voided by the department because of false statements in the application, failure to file an application in the proper form, or failure to deposit the application fee.

Remedies-Penalties-Enforcement

- p. 34, lines 19 thru 22; specifies that remedies available to landowners as

p. 36, lines 22 thru 25; expands the list of activities which may be penalized under the Act: violating any provision of the act, or any rule or order issued under the act, or submitting false information on applications.

p. 37, lines 16, and 23 thru 25; the department may, but no longer must report violations to the attorney general for prosecution. Instead, the department is now authorized to bring action against violators through its own legal staff. The language says "the department shall also enforce," (emphasis added). This implies that if violations are known to the department, must institute appropriate proceedings.

HB 52 Rep. Meloy stated he had talked with both the oil company representative and the railroad company representative and his amendments made the bill satisfactory. Amendments are: on page 4, line 1 to strike "at least one (1) mile in length." and to insert in lieu thereof "more than thirty (30) miles in length, which is not within the purview of the Strip Mine Siting Act or the construction of which was commenced before January 1, 1975." He moved this amendment and the motion carried unanimously (Reps. Jim Moore and Jack Moore were absent). The second amendment he offered was on page 4, line 6, following "section" to insert ", and other than transmission pipelines constructed to replace, modify, interconnect, extend or loop existing pipelines or needed to join one or more new wells located in Montana or in a contiguous state or Canadian province to an existing oil or gas pipeline to provide new service or service extension to customers or shippers. Said interconnecting and looping transmission lines as excluded hereby shall not exceed one hundred (100) miles in length." A third amendment was on page 4, line 1, to strike "20" and put in "6". He moved these two amendments together. He stated this bill would cover major pipelines and major railroads and would give the state an opportunity to review where they were being placed. The motion passed unanimously except for those absent. Rep. Stoltz moved do pass as amended. A roll call vote was taken. Motion carried (Reps. Barrett and Schye voted no; Reps. Jim Moore and Jack Moore absent).

HB 186 Rep. Huennekens, the chief sponsor, stated he wished no action taken on the bill.

HB 380 Chairman Bradley, the chief sponsor, stated she wished no action taken on this bill.

HB 533 Chairman Bradley went through the suggested amendments, exhibit 4. Mr. Barry of State Lands was called on for a comment. He said the bill was a good bill which would allow the state land department to ascertain the quality and quantity of coal on state land prior to leasing or releasing.

Rep. Meloy moved the amendments be adopted. Motion carried with Rep. Richards voting no and Rep. Ellison abstaining; Reps. Jim Moore and Jack Moore absent.

Rep. Meloy moved HB 533 as amended do pass. Motion carried. (Reps. Richards and Ellison abstained; Reps. Jim Moore and Jack Moore absent).

HB 581 Rep. Huennekens passed to the committee members copies of his suggested amendments, exhibit 5, and discussed them. He then moved their adoption. Motion carried unanimously (Reps. Jim Moore, Jack Moore, Kemmis absent). Rep. Huennekens moved that HB 581 as so amended do pass. A roll call vote was taken and carried unanimously with those present (absent Reps. Jim Moore and Jack Moore). Rep. Kemmis had returned.

PROPOSED AMENDMENTS
TO
HOUSE BILL 581

1. Amend on page 1, line 5, by striking "70-808, 70-810 THROUGH"
2. and further amend on page 1, line 13, by deleting "Utility" and inserting in lieu thereof "Energy and Coal Conversion Facility"
3. and further amend on page 10, line 15, by inserting after "fee" the punctuation and word "-- refund"
4. and further amend on page 11, lines 22 and 23, by striking ", such as power units and transmission lines", and inserting in lieu thereof the following: "which are physically and directly attached to each other and are operationally a single operating entity"
5. and further amend on page 12, lines 21 and 22, by striking "the total of the fees"
6. and further amend on page 12, line 22, by inserting before the word "estimated" the word "total"
7. and further amend on page 12, lines 22 and 23, by striking "each facility considered separately", and inserting in lieu thereof "the combined facilities"
8. and further amend on page 13, after line 11, by inserting the following:
"(c) If the board denies an application, and the board's decision is upheld in any subsequent court proceeding, the applicant is entitled to a refund of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter.

(d) The department may contract with a potential applicant under this chapter, in advance of the filing of a formal application, for the development of information or provision of services required hereunder. Payments made to the department under such a contract shall be credited against the fee payable hereunder."
9. and further amend on page 16, lines 9 through 15, by striking all the material contained therein beginning with "If" on line 9 and ending with "board." on line 15

10. and further amend on page 17, lines 14 through 17, by deleting and striking all the material contained therein beginning with the word "Upon" on line 14, and inserting in lieu thereof the following : "Within sixty (60) days after receipt of the department's report submitted under subsection (1) of this section, the board shall set a date for the certification hearing, which shall commence within six (6) months after receipt of the department's report."

11. and further amend on page 18, after line 17, by inserting a new Section 9 as follows:

"Section 9. Section 70-809, R.C.M. 1947, is amended to read as follows:

' 70-809. Record of hearing - procedure - rules of evidence -- burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act ~~(82-4201 to 82-4225)~~ Title 82, Chapter 42, R.C.M. 1947) shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

(2) In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that its application should be granted and that the criteria of section 70-810 are met.

(3) Any party to a certification proceeding held under this chapter may conduct pre-hearing discovery of all other known parties, including obtaining subpoenas of witnesses and subpoenas duces tecum for the production of such books, records, papers, documents and other objects as may be necessary and proper for the purposes of the proceeding, and the taking of testimony by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the hearing or for both purposes.

(4) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board or an employee of the department."

12. and further amend by renumbering the succeeding sections accordingly

13. and further amend on page 22, lines 17 and 18, by deleting and striking "The time requirement of section 70-806 and any ", and inserting in lieu thereof the word "Any"

14. and further amend on page 23, line 3, by deleting the quotation mark

15. and further amend on page 23, after line 3, by inserting the following: "(4) The board may waive compliance with any of the provisions of sections 70-807 through 70-811 if the applicant makes a clear and convincing showing to the board, after a public hearing held under the contested case procedures of the Montana Administrative Procedure Act, that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of sections 70-807 through 70-811."

16. and further amend on page 25, line 5, by inserting after "(b)" the words "in the case of energy producing facilities,"

17. and further amend on page 25, line 8, by striking "facilities" and inserting in lieu thereof "energy"

18. and further amend on page 33, line 2, by inserting after "material" the words "and knowingly"

19. and further amend on page 36, line 23, by inserting before "submits" the word "knowingly"

20. and further amend on page 39, line 6, by inserting the following: "Persons required to file long-range plans under the amendments made by section 14 of this act to section 70-814, R.C.M. 1947, shall have until June 1, 1975, to file such plans."

1975
Senate

43rd

LEGISLATIVE SESSION

COMMITTEE ON NATURAL RESOURCES AND FISH & GAME

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
365	2-12-75	3-11-75	3-11-75				3-11-75		
369	3-7-75	3-14-75	3-14-75					3-14-75	
reconsideration 369	3-22-75	3-22 & 3-25	3-25						3-25-75
379	3-4-75	3-15-75	(BE TABLED)						
401	2-21-75	2-22 & 3-26	3-26-75					3-26-75	
453	3-7-75	3-18-75	3-18-75	(Without recommendation)					
473	2-22-75	3-11-75	3-11-75				3-11-75		
492	2-27-75	3-13 & 3-22	3-22-75					3-22-75	
493	2-22-75	3-22-75	3-22-75				3-22-75		
500	2-10-75	3-8-75	3-8-75				3-8-75		
522	2-28-75	3-15-75	3-15-75				3-15-75		
533	2-4-75	3-19-75	3-19-75					3-19-75	
569	2-26-75	3-19-75	3-19-75					3-19-75	
579	2-21-75	3-4 & 3-8	3-8-75					3-8-75	
581	3-7-75	3-20 & 3-25	3-25	(AND AS SO AMENDED, WITHOUT RECOMMENDATION)					
600	2-22-75	3-11-75	3-11-75					3-11-75	
629	2-26-75	3-13 & 3-14	3-14-75						3-14-75

(Use Separate Sheet for Senate, House Bills, and Resolutions)

March 20, 19

The thirtieth meeting of the Natural Resources and Fish and Game Committee was called to order by Senator Flynn, on the above date, in Room 405, at 9:30 a.m. in the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HB 581: Act to generally revise the Montana Utility Siting Act of 1973.

Representative Francis Bardanoue, sponsor, feels this is a relatively important bill. Montana has a Utility Siting Act. Representative Bardanoue feels HB 581 is one of the finest acts in Montana. It enlarges upon the areas that are covered by the present law. In some areas, Representative Bardanoue continued, HB 581 would remove some unnecessary phases of this act. The primary part of the bill is the enlargement of law into areas of energy conversion facilities. It concerns many ranchers in the eastern and southeastern parts of Montana. Mr. Bardanoue stated that the Department of Natural Resources has made a real attempt to carry out the present law.

Mr. Gary Wicks, Director of the Department of Natural Resources, commented on allocations.

Mr. Ted Doney, Chief Counsel of the Department of Natural Resources, discussed substantive changes proposed in HB 581. (See Attachment #1.)

Representative Willy Day appeared as a citizen supporting HB 581. He feels it would be very beneficial to his area.

Mr. Charles Yarger, rancher from McCone County, stated he didn't object to the coal development or Burlington Northern's proposed "Circle West" project. However, he is opposed to unplanned and unsupervised development. He feels that local citizens of the impacted area should have input into the decision making process. One of the main reasons he and other ranchers support HB 581 is because it allows the Department of Natural Resources to conduct the study on the justification for construction of such a facility. (See Attachment #2.)

Mr. Tom Vigra, Circle, stated his support for the bill.

Mr. Lyle Quick, McCone Conservation District, stated his support for HB 581.

Mr. Ruane D. Dunlap, Chairman of the Board of County Commissioners, appeared as a proponent of HB 581. (See Attachment #3 for his testimony.)

Mr. Bob Carrette, Western Energy, proposed amendments to HB 581. (See Attachment #4.)

Mr. Ward Shanahan, Dreyer Bros., Inc., issued copies of suggested amendments.

the bill should be sufficiently amended so that it does not affect their proposed fertilizer plant in McCone County. He issued Dreyers Bros. position paper, and an article they obtained from Montana State University on saline-seep and the uses of fertilizer. (See Attachment #5.)

Mr. Gene Phillips, Pacific Power and Light Company, supported the amendments submitted by Mr. Carette. He stated the company doesn't feel a relocation should be subject to this act. He told the committee of other parts of this act he objected to.

Mr. Peter Pauly, Montana Dakota Utilities, stated his favor of the amendment submitted by Mr. Carette.

Mr. H. R. Bryan stated his opposition to HB 581. He believes there are laws that insure environmental compatiability.

Irene Berger, Vice-President of the Circle Chamber of Commerce and Agriculture believes the bill is specifically designed to discourage the Circle West Project, which she feels is necessary to the economy of the town and county. (See Attachment #6.)

Mr. Tom Atkinson and Kent Larson, both from Circle, stated their opposition of HB 581.

Mr. Marvin Presser, Chamber of Commerce -- Wolf Point, opposed this piece of legislation.

Mr. Ray Daeleck, Joplin, also stated his opposition to HB 581.

Mr. Tom Winsor, Montana Chamber of Commerce, concurred with Ward Shanahan's remarks.

Mr. John Rabenberg, Fort Peck, testified also as an opponent. (See Attachment #7.)

Senator Dave Manning feels the bill imposes unfair instructions on the Burlington Northern project. He submitted to the committee a list of people from his district opposing passage of HB 581.

Senator S. A. Olson stated his opposition to the bill.

Representative Bardanoue was granted a rebuttal period which he again stressed the importance of this bill.

CONSIDERATION OF HB 665: Act requiring owners of land bordering upon navigable waters obtain a permit from Department of Natural Resources to build docks and wharves.

Representative Bardanoue, sponsor, said HB 665 possibly could be amended to define the area of regulation without running into any constitutional conflicts. He said the bill will provide regulations to protect our valuable natural resources.

Senator Roskie informed the members that a similar bill (SB 175) is now in the House with the same amendment included. Rep. Bardanoue stated the bill (SB

HJR 15

VISITOR'S REGISTER

March 20, 1975

NAME	REPRESENTING	SE
Robert L. Landon	West. Nat. Res. & Game - Montana	4
Ted J. Doney	"	5
Alfred Arnold	"	6
Wm. Mahan	DREYER Bros. INC.	
Bob Ouyette	Western Energy Co.	
George J. Wills	Deep Well R&E	5
John Elzner	AMAX Coal	
Gene Clark	Water Resources - Butte	
Lee Harquist	ETC	
H. W. BRYAN	Citizen -	
John G. Loring	Farmer	
Ralph Eggbrecht	Chamber of Commerce	
Bill Robinson	Citizen	
SA Olson -	Senator, dist 28	
John W. Moore	Montana Chamber	
Peter C. Pavly	MONTANA-DAKOTA UTILITIES Co.	
Gene Phillips	Pacific Power & Light	
Tom Bruckner	Harold McInnes Leg. Assn	5
Lyf. Quick	McInnes Conservation Dist.	5
Charles Yanson	self	2
Freddie D. Hurd	W. Park County Commissioners	
Mar. Betty Dunlop	self	
Donna Quick	self	5
Wayne Paulowski	Circles Mont. self	5

DATE March 20, 1975

COMMITTEE ON NATURAL RESOURCES AND FISH & GAME BILL NO.

[illegible]

exp. for

Edna M. Buge, Circle
Tom Atkinson Circle
Kent Larson - Circle
Edna Dreyer - Circle
June Garger "
Marvin Gresser Wolf Point
John Gabeberg Fort Peck,

✓
"
✓

Prepared By
Department of Natural Resources and Conservation

House Bill 581, introduced by Bardanouve, et al., is sponsored by the Department of Natural Resources and Conservation. The bill proposes amendments which generally revise the various provisions of the Montana Utility Siting Act of 1973 (Title 70, Chapter 8, R.C.M. 1947). Most of the proposed amendments, in the Department's opinion, do not change the substance of the current law, but only rewrite the law for proper drafting style, and clarify several vague provisions.

The major substantive changes proposed by H.B. 581 are as follows:

✓ (1) Changing Name of Act

Page 1, line 14--Changes name from "Montana Utility Siting Act of 1973" to "Montana Major Facility Siting Act." The Act covers more than just utility facilities, especially with the amendments made by this bill.

(2) Definition of "Facility"

(A) Beginning on page 3 and continuing through page 6 of the bill, the definition of the type of facilities covered by the Act would be amended in the following manner:

1. Page 3, lines 6 and 7--Clearly provides that oil and gas refineries are not covered by the Act. The Department has interpreted the existing law to already exclude such facilities;
2. Page 3, lines 15 and 16--Lowers the covered size of a gas-ification facility from 100,000,000 to 25,000,000 cubic feet of gas per day;
3. Page 3, lines 19 and 20--Lowers the covered size of a liquid hydrocarbon production facility from 50,000 to 25,000 barrels per day;
4. Page 4, lines 3 through 7--Specifically includes facilities which are designed for, or capable of, utilizing, refining, processing, or converting 500,000 tons of coal or more per year. The proposed plant by Burlington Northern-Dreyer Brothers at Circle West would be included within this definition. The Department has not made an administrative determination that this proposed plant is not already covered by the Act; this definition would clearly provide that it is;
5. Page 4, beginning on line 8, through page 5, line 21--Exempts transmission lines of 69KV or less from the Act, and also transmission lines less than 230 KV and 10 miles or less in length. The Department after its experience in administering the current law, believes it is unnecessary to cover such transmission lines in most cases, since the lines have negligible environmental impacts.

6. Page 5, line 24--Makes water pipelines connected with a facility a separate facility under the Act.

7. Page 6, line 7--Clearly includes in situ gasification of coal as a facility.

(3) Redefining of Associated Facilities

Page 6 lines 10 and 11--Clearly provides that substations are associated facilities. Under current law, distribution substations are apparently not covered. The Department believes they should be covered, since they are in effect "nerve centers" and therefore determine the future location of distribution lines.

(4) Relocation or Upgrading

Page 7, lines 13 through 17--It is not clear under current law whether relocation or upgrading (increasing KV level) is covered by the Act. Department believes they should be, since such actions could have environmental impacts.

(5) Exemptions from Act

Page 9, lines 4 through 10 -- This addition will allow the Department of Natural Resources and Conservation to adopt rules allowing certain exemptions from the Act where included facilities do not have a significant environmental impact. Examples might include relocation of 300' of a 230 KV transmission line, or upgrading a 169 KV line to 230 KV.

(6) Grandfather Clause

Page 9, lines 11 through 13 -- The existing grandfather clause can be found on page 24, line 25, through page 26, line 2. This is deleted and reenacted here in a more logical place in the Act. These are changes in wording to take care of cases where a transmission line may have been seen on the drawing board, but not yet under construction on January 1, 1973.

(7) Elimination of the Two Year or Nine Month Advance Filing

Page 10, lines 18 through 24 -- Existing law requires the applicant to file for a certificate under the Act to apply at least two years or nine months in advance of construction of a proposed facility, depending on its size. Although this provision may now be waived by rule under 70-806(7), the Department sees no logic in this requirement, particularly when the law still requires a comprehensive study for each application by the Department. Once the study is completed, the application should be acted upon, and if approved, allowed to proceed.

(8) Filing Fees

✓ Page 13, lines 2 through 25 -- Provides that applicants shall pay a further filing fee if the actual cost of the facility exceeds the estimated cost, or receive a refund if

(9) Increased Study Period

Page 16, lines 10 through 18 -- These amendments would increase the study period of a major facility from 600 days to two years and of a minor facility from 9 months to one year.

✓ (10) Hearing Date

Page 18, lines 3 through 11 -- clarifies the time required for the certification hearing.

✓ (11) Burden of Proof

Page 20, lines 3 through 6 -- Clearly puts the burden of proof on the applicant.

the applicants in the certification hearing.

✓ (12) Discovery

Page 20, lines 7 through 15 -- Clearly provides that discovery may be conducted by the parties to a certification hearing. There is some question under existing law (Administrative Procedure Act) whether this is true.

✓ (13) Hearing Examiner

Page 20, lines 16 through 19 -- The hearing examiner, if appointed, cannot be a member of the Board or a Department employee.

(14) Limiting the Time for the Board to Make a Decision

Page 20, lines 24 and 25 -- There is no requirement under current law that the Board make its decision within a certain time. This amendment would require a decision to be made within 90 days of the completion of the hearing.

(15) Defining Public Interest, Convenience and Necessity

Pages 22 and 23, lines 25 through 10 on page 23 -- These proposed amendments set forth the considerations to be made by the Board in determining that a proposed facility will be in the public interest, convenience and necessity.

✓ (16) Emergency Clause

Page 25, lines 6 through 14 -- Provides for waiver of the usual procedures in emergency cases.

(17) Requiring Persons Other than Utilities to File Long-Range Plans

Pages 27 and 28, lines 18 through 24 on page 28 -- Since more than just utility companies are covered by the Act, other companies also contemplating construction of a facility should file long-range plans

Mr. Chairman, members of the Committee, my name is Charles Yarger. I am a farmer - rancher from McCone County. I live approximately nine miles south east of B.N.'s proposed fertilizer plant.

I represent myself and an ever increasing number of concerned McCone County farmers, ranchers and main street business men.

I wish to state at the outset, I am not presently, nor have I ever stated, privately or publically to any individual, group of individuals or organization that I am in opposition to coal development or B.N.'s proposed Circle West Project. However, we are adamantly opposed to unplanned and unsupervised development.

This is the third time this session that I have traveled to Helena. All three trips have been focused upon our concern for HB 581, which we as farmers-ranchers and concerned citizens whole-heartedly support.

In a project such as the proposed CIRCLE West concept, there will naturally be individuals who favor this concept as there will also be individuals who are not in favor of this development. We feel that in the interests of justice, neither of these two groups should be afforded the opportunity to solely conduct a study to prove justification non justification of a project such as Circle West.

One of the primary reasons we support HB 581 is because it allows the Department of Natural RESOURCES, A RELATIVELY DISINTERESTED GROUP, TO CONDUCT THE STUDY ON THE JUSTIFICATION FOR CONSTRUCTION OF SUCH A FACILITY.

Any project, the magnitude of CIRCLE West, is bound to have a profound and hopefully a beneficial impact. We feel that local citizens of the impacted area should have input into the decision making process.

This hearing today is an example of that local input. As the Circle West concept develops, we hope that this exchange of ideas will continue.

One of the primary reasons we want B.H.'s plant under the provision of HB 581 is because it provides a mechanism through which a relatively disinterested analysis of the project can occur. It also provides the mechanism through which local people can participate.

We wish to state unequivocally that we are not singling out B.H. as the only organization proposing industrial development. We are not picking on them as the only potential industrial organization in our area. We are also interested in Wesco, Tenneco, Chevron and Shell Oil who are among the applicants that have requested water for industrial purposes out of FORT Peck Reservoir.

We have a large amount of coal and interest in this coal in our area. As an example, I would like to present the committee a copy of requests for water from Fort Peck, which we received from Gary Wicks, the Director of the Montana Department of Natural Resources and conservation.

There have been conflicting reports on the actual amount of water requested from Fort Peck Reservoir.

Therefore, in conclusion, I would like to state - in an effort to answer all of these questions and in the interests of facilitating the above mentioned concerns and requests, we would strongly urge the committee to recommend a do pass on HB 581.

Thank you.

BEST COPY
AVAILABLE

Helena, Montana
March 2, 1978

Testimony given by Eugene D. Dunlap of Circle, Montana, before
the Senate Natural Resources Committee.

Hi Chairman and Members of the Committee

My name is Eugene Dunlap. I am the Chairman of the Board of
County Commissioners of McCone County at Circle, Montana.

I am appearing here as a proponent of H.B-643, which amends
and revises the Montana Utility Siting Act of 1973. We are here
today in favor of this piece of legislation for the following
reasons:

1. The County Commissioners of any county are required
by State statute to protect the safety, health, and
welfare of all of its residents. It is the duty
for a Board of County Commissioners to properly plan for
their county. The siting of a utility is
when the county's interests are most vital.
The siting of a utility project in Montana is a
one shot project. Impact information relating to
roads, schools, law enforcement, etc., is absolutely
necessary to local governments if we are to be able
to plan adequately.
2. The 60 day period of delay provided for in this bill
is another necessity as far as County governments are
concerned. Many costs are incurred by local governments
in the case of large scale developments such as coal
mining long before any severance tax or property tax

This time delay can be well spent by local governments in attempting to secure assistance in meeting these so-called front-end costs.

3. Adequate planning time is essential if orderly development is to occur. We are not in opposition to any and all types of development. We are, however, absolutely against any development which is not well planned and orderly. We are also opposed to any scheme of development which would result in a final net monetary loss to the taxpayers of the county. We feel that H.B. 581 is a step in the right direction if we are to have planned, orderly development.
4. In the case of the proposed development in McCone County, Burlington Northern Railroad is the developer. A great deal of information has been released by this company relative to what they propose to do in McCone County; however, the County Commissioners of this county have not yet been contacted by anyone from B.N. relative to our participation in these plans. This fact does not support the notion that large natural monopolies intend necessarily to act in good faith when dealing with small local government units. The passage of H.B. 581 will offer any and all developers a golden opportunity to demonstrate to the public that they do in fact propose to act in good faith in their development activities.

e amended in the third reading copy of the bill as follows:

Bob
Caret

Amend on page 5, line 20

Following: "of"

Strike: "less than"

ATTACHMENT #4

Further amend on page 5, line 21

Following: "kilovolts"

Add: "or less"

This amendment would allow a 230 kilovolt line 10 miles or less in length to be placed in operation without any application to the Department. The words "or less" belong in rather than "less than" because the 230 kilovolts lines many times are needed near a major industry which is expanding and needs the additional voltage immediately or a new major industry which needs the power quickly to begin operation. Unless this amendment is granted, all 230 Kv lines would come under the two year review period. 161 kv and 100 kv over 10 and under 30 miles would have a one year review period. If over 30 miles, they would come under the two year period.

Amend on page 6, lines 10 and 11:

Following: "dams,"

Strike: substations, including distribution substations,"

Under the present law you can build substations, including distribution substations, without applying to the Department. If this amendment not granted, a two year wait, under the new two-year amendment, rather than 600 days would be mandatory before substations including distribution substations could be built. This could be disastrous to the

this bill applies only to substations of more than 69 kilovolts but even if it does, the argument against this substation language is the same and our offered amendment striking the language should be accepted.

Amend on page 13, lines 2 through 14

advised

Strike: all of "(b) If a certificate is issued by the board for the proposed facility, immediately upon completion of construction of the facility the applicant shall give a notice of completion to the department. As soon as possible after giving the notice of completion the applicant shall file an affidavit with the department stating the actual cost of the facility in such detail as the department may require to determine whether a further fee is due. If the actual cost exceeds the estimated cost, the applicant shall file a further fee for the difference based upon the declining scale in subsection (2) (i) of this section. No further fee is required, however, if it is computed to be five hundred dollars (\$500) or less."

Filing fees are provided for under Section 70-806 of our present law and Section 70-807 provides that the department "shall commence an intensive study and evaluation of the proposed facility". Section 70-808 outlines all of the things that the Board must include in a certificate if it issues one.

This bill on page 13 of the third reading copy, lines 2 through 14,

notice of completion to the Department stating the amount of actual cost and if this actual cost exceeds the estimated cost upon which the filing fees were paid, then the applicant must pay an additional fee equal to the difference between the estimated cost and the actual cost. It sounds ridiculous in these times of inflation that such a matter is even put before this legislature.

The Montana Power Company alone, not counting all the other utilities in Montana, has paid filing fees from 4/20/73 to 12/31/74 amounting to \$1,785,634 in seventeen applications. The big one, of course, Colstrip 3 and 4 which was \$1,232,930. In the other sixteen applications the total fee equals to \$552,694. It seems utterly ridiculous for this Department to be asking for this additional money as set forth in the bill on page 13. For that reason, we have asked that all of subsection (b) on page 13, lines 2 through 14 be stricken.

Amend on page 13, line 15

Before: "IF"

Strike: "(C)"

Insert: "(b)"

Amend on page 13, line 20

Before: "THE"

Strike: "(D)"

Insert: "(c)"

These are simply housekeeping amendments needed because of the above amendment.

Amend on page 15, lines 12 through 25

Reinsert: "(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing

(8) The board may, in its discretion, waive the necessity of filing an application where utility facilities are being relocated pursuant to sections 32-2414 through 32-2416, R.C.M. 1947, and where it is satisfied after an examination of the environmental impact statement filed pursuant to chapter 65 of Title 69, R.C.M. 1947, that such relocation will not significantly affect the environment."

Our amendment has asked that we reinsert on page 15 subsections (7)

(8), lines 12 through 25 relating to waiver provisions. So this committee will understand, we have applied seventeen times for waiver to date. Ten waivers have been granted and they have been granted by the Board because they should have been and because to wait for these lines to be operable would probably stop advancement in Montana.

I am passing out a list showing the line involved, the date filed, the filing fee and whether the certificate has been granted under waiver or under the 180 day review period for certain transmission lines 30

miles or less in length.

Amend. on page 25, lines 6 through 14

Strike: All of subsection "(4) THE BOARD MAY WAIVE COMPLIANCE WITH ANY OF PROVISION OF SECTIONS 70-807 THROUGH 70-811 IF THE APPLICANT MAKES A CLEAR AND CONVINCING SHOWING TO THE BOARD, AFTER A PUBLIC HEARING HELD UNDER THE CONTESTED CASE PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, THAT AN IMMEDIATE, URGENT NEED FOR THE FACILITY EXISTED SUFFICIENTLY IN ADVANCE TO FULLY COMPLY WITH THE PROVISIONS OF SECTIONS 70-807 THROUGH 70-811."

Because of an objection to the striking of the waiver clause, the House Committee added a new waiver clause which is contained on page 25, lines 6 through 14 which we ask to be stricken for the reason that under the new waiver clause, a waiver would only be given after a public hearing held under the contested procedure under the Montana Administrative Procedure Act. This could hold up a waiver request for a year or to

you to look at the list I passed out. The Arbiter smelter at Anaco required a 230 kilovolt line and we applied first, as you will note for the Arbiter Plant's 230 kilovolt line on 5/14/73 and that certificate was granted by waiver on 7/20/73. The additional electric furnace which is connected with the Arbiter, which is No. 11 on the list which we applied for on 7/23/74 and that was granted by waiver on 3/10/75. Now the Arbiter Plant employs more than 200 people and the electric furnace employs more than 200 people and if a waiver could not have been granted except after a long time period as this bill would sanction the obvious result would have been great unemployment, less product and greater hardship on the people of Montana.

This amendment reinserts the waiver provision of the original act and thus assures that in emergency situations where it is the best interest to the State to waive the time limits, they can be waived without needless delay. The Board has every right to grant or not to grant the waiver based upon its reasonable assessment of each factual situation.

This amendment also reinserts the waiver language of subsection (8) found on page 15, lines 19 through 25 providing for waiver of the notice of an application in highway utility relocations where an impact statement is already filed for the highway. The idea of not being able to grant a waiver on highway relocation and having to wait may one to two years would needlessly delay construction of the highway system. The Highway Department has to, and does, file an environme

In conclusion, we are asking four sound and logical amendments that certainly should be granted if the Plant Siting Act is to work and not bog down development in Montana.

First, to eliminate the need for an application on transmission line of 230 kilovolts or less and 10 miles or less in length.

Second, to strike the substations, including distribution substations because this is an attempt to add to the act and delay progress.

Third, to strike the part that will make us pay the difference between the estimated cost and the actual cost of a facility. That's not all the Board's work has been done.

Fourth, to reinsert the present waiver provision and strike the waiver provision that was put in in the House. Certainly as shown from the list of seventeen applications by this one company alone a flexible waiver provision is absolutely necessary including the waiver of highway relocation.

APPLICATIONS FILED UNDER THE MONTANA UTILITY SITING ACT AS OF
January 17, 1975

Earl Canale

LINE	DATE FILED	FILING FEE	DATE CERTIFICATE	
			RECEIVED	
Laurel-Bridger 100 kv	4/20/73	\$ 17,709	9/14/73	Waive
Billings-Laurel 100 kv Line	5/14/73	11,376	9/14/73	Waive
Billings East Side 100 kv	5/14/73	978	7/20/73	Waive
Butte Plant 230 kv	5/14/73	5,010	7/20/73	Waive
Billings-Great Falls 230 kv	5/14/73	90,250	In Litigation	
Strip 3 and 4	6/6/73	1,232,930	Pending under hearing	
Strip 1 and 2 Water Supply System (115 kv) 230 kv Line	6/29/73 Amended, 1/2/74	287,685	3/1/74 11/15/74	Waiver Waiver
Clyde Park-Dillon 15 mi. 161 kv	6/6/74	64,950	Pending under 600 day r	
Clyde Park-Dillon 7 mi. 69 kv		9,180	Pending under waiver r or 180 day provisio	
Electric Furance 230 kv	7/23/74	5,790	3/10/75	Waiver
m 100 kv	10/24/74	1,560	3/10/75	Pending unde Waiver or 180 day p
Continental Oil 100 kv	12/31/74	1,350	"	"
Clyde Park-Bozeman 161 kv "B" Line	12/31/74	24,750	"	"
oadview-Alkali Creek 161 kv Line	12/31/74	24,225	Pending under 600 day r	
lsall-Clyde Park 161 kv Line	12/31/74	10,260	Pending under Waiver request or 180 day p	
aconda-Hamilton 161 kv Line	12/31/74	47,625	Pending under 600 day r	

*Bob
Carell*

HOUSE BILL NO. 581

Be amended in the third reading copy of the bill as follows:

1. Amend on page 5, line 20
Following: "of"
Strike: "less than"
2. Further amend on page 5, line 21
Following: "kilovolts"
Add: "or less"

File Office
dland Bank Bldg.
, Montana 59101
406-259-4521

D4

Ranch Operations
P. O. Box 96
Circle, Montana 5921
Phone 406-485-3621

March 20, 1975

RE: Dreyer Brothers Inc., and House Bill 581

Senator Elmer Flynn
Chairman, Senate Committee
Natural Resources and Fish & Game
State Capitol
Helena, Montana

Dear Senator Flynn:

Enclosed with this letter is a "position paper" prepared on behalf of Dreyer Brothers Inc., with respect to House Bill 581, a General Revision of the Montana Utility Plant Siting Act.

Dreyer Brothers Inc., believes this bill should be killed or that the bill should be sufficiently amended so that it does not affect our proposed fertilizer plant in McCone County. The enclosed position paper develops our reasons at greater length.

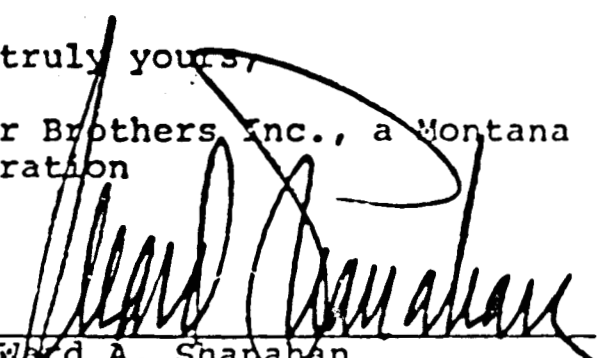
We are also enclosing an article we obtained from Montana State University on Saline-seep and the uses of fertilizer, for your information.

We would appreciate the opportunity to discuss House Bill 581 further with you. We would like an opportunity to answer any questions you may have.

Very truly yours,

Dreyer Brothers Inc., a Montana
corporation

By


Ward A. Shanahan
Registered Lobbyist
Third Floor - First National
Bank Building
P. O. Box 1686
Helena, Montana 59601

WAS/hk

Telephone 442-8560

HOUSE BILL 581
GENERAL REVISION OF THE
UTILITY PLANT SITING ACT

Dreyer Brothers Inc., a Montana corporation (a subsidiary of Burlington Northern Inc.), has high hopes of doing something in McCone County, Montana, to help ease the energy crisis and world-wide fertilizer shortage.

The idea of using coal to produce fertilizer is not unique. There are 19 plants around the world using this process. However, virtually all present American fertilizer production is based on natural gas, which has become more expensive and in short supply in the energy crunch.

Thus, Burlington Northern has decided to use some of the thirty-one thousand acres of range land on the Dreyer Ranch near Circle, Montana, to build a fertilizer plant using the lignite under this land. The coal may also lend itself to the production of synthetic fuels to power BN's locomotives.

It is the company's intention to design the complex function in harmony with continuing agriculture and ranch operations in the area. It is expected that the mining operations will disturb no more than 30 or 40 acres of land, and that the mined area can be reclaimed by contouring and other methods.

By our projections, a single acre of land taken from agricultural use and devoted to mining and fertilizer production, will add the equivalent of fifty thousand acres through improved crop yields. We believe that is a very comfortable trade-off in land use.

SPECIFIC OBJECTION TO HOUSE BILL 581:

Dreyer Brothers Inc., announced its plans to the administration of the State of Montana, the Federal Agencies and to the Montana Congressional Delegation in June of 1974. Since that time its officers have attempted to work closely with federal and state agencies on its application for water, and its proposed coal mine. The company is already regulated by at least five (5) separate state laws as well as applicable federal law. The response to our efforts is House Bill 581 which is a general revision of the Utility Plant Siting Act, including specific amendments intended to bring our Circle West Fertilizer Plant within the purview of that law.

We have the following serious objections to the bill:

1. PUBLIC NEED: This term which appears more than a dozen times in House Bill 581 is not defined. However, the bill proposes to have the state determine the public need for our plant which will produce a commodity to be sold on the free market. This concept is foreign to the idea of a free market. Need should be determined by the market, not by the state. In any event we don't know what public need means, because it is not defined in House Bill 581.

2. OIL AND GAS REFINERIES EXCEPTED: The principal "feed stock" for ammonia fertilizer in the United States at the present time is natural gas. Yet this bill (page 3, line 6 and 7) excludes our principal competition from regulation.

3. FLAT RATE FEE PROVISION: House Bill 581, as it left the house contained a large flat rate fee to be paid based on the value of our plant. The fee is supposed to cover the cost of the environmental impact statement, but in House Bill 581 it bears no relationship to the actual cost of the work to be done. We have endorsed House Bill 340, a general fee bill now pending before the Senate State Administration Committee with changes insuring that a fee should be paid once, should be accounted for, and we should get a refund of unexpended monies. After all, this is a fee, not a fine, penalty or a tax.

4. EXTENDED TIME DELAY: This bill extends the time under the present Utility Plant Siting Act from 600 to 730 days. Add to this 60 days to set a hearing, 6 months within which to set it, 2 months or more for the hearing (based on actual estimate by the DNR attorney), plus all possible appeal times. In our opinion, the time for decision under House Bill 581 is a period of from 4 to 5 years (page 16, line 10, through page 18).

5. SCOPE OF THE HEARING: The bill (Section 8, pages 18 and 19) allows virtually anybody to become a party. This provision, when coupled with the undefined concept of "public need", makes the scope of the hearing unbelievably vague and practically endless. There is no effective means of limiting the scope of inquiry and defining its objectives.

6. UNLIMITED HARRASSMENT: The bill (page 20, lines 7 through 15) allows any of the unlimited parties to

conduct their own investigation of the applicant (at the applicant's expense). These "powers of discovery" are provided to anybody to pursue whatever they might feel is included in the unlimited, undefined concept of "public need". We believe this substantially denies us the right of due process, and is generally unfair and unreasonable.

7. EXISTING REGULATIONS: This plant will be required to satisfy existing provisions of federal law (including the Environmental Protection Act and the Rivers and Harbors Act). In addition we now appear to be covered by state laws regulating Strip Mine Siting (RCM, 1947, Section 50-1601 et seq), the Strip Mining and Reclamation Act (RCM 1947, Section 50-1034 et seq), The Montana Water Use Act (RCM 1947, Section 89-865 et seq), The Montana Air Pollution Law (RCM 1947, Section 69-3906 et seq), and the Montana Water Pollution Law (RCM 1947, Section 69-4801 et seq). The company will file impact statements, pay fees and be regulated under all these laws.

CONCLUSION

There are strong and compelling reasons why our "Circle West" fertilizer plant should not be regulated like a franchised public utility using the concepts of "public need" or "public convenience and necessity". In addition, House Bill 581 has the other serious objections which we have listed above. These appear to us to be basically unjust and unfair to any company regulated by this law. An applicant under this law is faced with an undefined objective and unlimited opponents. The scope of the inquiry is also unlimited. Rather than creating a fact-finding proceeding "in the public interest" the bill establishes a "Kangaroo Court". We think recent developments in the Montana Power Company hearings at Bozeman, bear out this judgment.

Our company has endorsed the concept of House Bill 113, which provides for advance payments of taxes to local governments to allow them to adjust to "local impact". This position coupled with our endorsement of the payments of fees for environmental impact statements (HB 340) is an offer of our "good faith" to the people of McCone County and the State of Montana.

We think that the Montana Senate should make a determination now of whether they think our plant is "needed". This can be done by amending House Bill 581 to remove our plant from its requirements. These should be as follows:

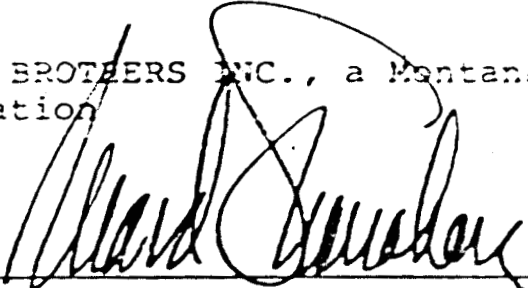
- (1) On page 1, lines 14 and 15, by restoring the original title "Utility Plant Siting Act".
- (2) On page 2, line 4, by deleting the words "and other products".
- (3) On page 3, by striking all of lines 5 and 6, and inserting the following language before the words "and associated facilities":

"any energy generating and conversion plant or other utility facility . . . "

RESPECTFULLY submitted.

DREYER BROTHERS INC., a Montana
corporation

By


Ward A. Shanahan
Registered Lobbyist

/18/75

HOUSE BILL 581
GENERAL REVISION OF THE
UTILITY PLANT SITING ACT

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for environmental impact statements (HB 340) is an offer of our "good faith" to the people of McCone County and the State of Montana.

We think that the Montana Senate should make a determination now of whether they think our plant is "needed".

This can be done by amending House Bill 581 to remove our plant from its requirements. These should be as follows:

- (1) On page 1, lines 14 and 15, by restoring the original title "Utility Plant Siting Act".
- (2) On page 2, line 4, by deleting the words "and other products".
- (3) On page 3, by striking all of lines 5 and 6, and inserting the following language before the words "and associated facilities":
"any energy generating and conversion plant or other utility facility . . . "

RESPECTFULLY submitted.

DREYER BROTHERS INC., a Montana corporation

By _____

Ward A. Shanahan
Registered Lobbyist

3/18/75

*HB 340
B 62
Utility Siting
Act.
Public records!*

I am Irene Berger, vice president
of the Circle Chamber of Commerce and
agriculture and come to testify on behalf
of the Circle Chamber and Commerce and
agriculture.

BEST COPY
AVAILABLE

In a recent poll taken by the
President of the Chamber, the opposition
to HB 501, was 11 to 1 against the bill.

We believe that the bill is of greatly
benefit to discourage the Circle West
project, which we feel is a hindrance to
the economy of our town and county.

But that HB 501 would subject
the observable, and clean, industry
to indefinite delays by forcing them
to duplicate in practically every
area regarding environmental impact
and pollution, their existing compliance
with several State and Federal laws
already in effect.

We respect the concern of our farmer
friends - but can see absolutely no
advantage to either them or us in dealing
with impact and pollution in the
industry in HB 501. Irene Berger

John Rosenberg - Port Jack, Montana
and

Live in McCone County. - Farmer Ranch

I have been asked to testify at the
hearing on behalf of a couple groups.

First of all on behalf of a concerned
group from Starfield Co. I was asked to
ask them to give testimony about

I have also been asked to testify
on behalf of the Wolf Point Chamber of
Commerce and Agriculture.

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after a fertilizer plant has followed the
Shipman sitting act

50-1101

Shipman relocation act

50-1101

Montana Water Use act

89-865

air pollution act

69-3906

Water pollution act

69-4801

and Federal environmental Protection act.

and after the fertilizer companies did not

oppose H 340

H. 113

H 535

We feel that H. B. 531 would slow down
the industrial development of which we

want. Therefore we support H. B. 531.

7-1-1957

I feel pushing industry and business
and increasing government spending the
only people left will be the farmers
to pay the taxes. I oppose 4551 as a
farmers' voucher.

BEST COPY
AVAILABLE

Be amended in the third reading copy of the bill as follows:

1. Amend on page 15, lines 12 through 25

Reinsert: "(7) The board may waive compliance with the time of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

(8) The board may, in its discretion, waive the necessity of filing an application where utility facilities are being relocated pursuant to sections 32-2414 through 32-2416, R.C.M. 1947, and where it is satisfied after an examination of the environmental impact statement filed pursuant to chapter 65 of Title 69, R.C.M. 1947, such relocation will not significantly affect the environment."

2. Amend on page 25, lines 6 through 14

Strike: all of subsection "(4) THE BOARD MAY WAIVE COMPLIANCE WITH ANY OF PROVISIONS OF SECTIONS 70-807 THROUGH 70-811 IF THE APPLICANT MAKES A CLEAR AND CONVINCING SHOWING TO THE BOARD, AFTER A PUBLIC HEARING HELD UNDER THE CONTESTED CASE PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, THAT AN IMMEDIATE, URGENT NEED FOR A FACILITY EXISTS AND THAT THE APPLICANT DID NOT HAVE KNOWLEDGE THAT THE NEED FOR THE FACILITY EXISTED SUFFICIENTLY IN ADVANCE TO FULLY COMPLY WITH THE PROVISIONS OF SECTIONS 70-807 THROUGH 70-811."

HOUSE BILL NO. 581

Amend the third reading copy of the bill as follows:

1. Amend on page 6, lines 10 and 11

Following: "dams,"

Strike: "substations, including distribution substations,"

HOUSE BILL NO. 581

Be amended in the third reading copy of the bill as follows:

1. Amend on page 13, lines 2 through 14

Strike: all of "(b) If a certificate is issued by the board of the proposed facility, immediately upon completion of construction of the facility the applicant shall give a notice of completion to the department. As soon as possible after giving the notice of completion, the applicant shall file an affidavit with the department stating the actual cost of the facility in such detail as the department may require to determine whether a further fee is due. If the actual cost exceeds the estimated cost, the applicant shall file a further fee for the difference based upon the declining scale in subsection (2) (a) of this section. No further fee is required, however, if it is computed to be five hundred dollars (\$500) or less

2. Amend on page 13, line 15

Before: "IF"

Strike: "(C)"

Insert: "(b)"

3. Amend on page 13, line 20

Before: "THE"

Strike: "(D)"

Insert: "(c)"

Wethersham
March 19, 1975

To Whom their May Concern.

I am unable to attend
the Hearing on H.B. 581
as I am Calving and lambing
and am all alone, but
I do hope they will use
common sense and kill
their bill. We need
Development in Eastern
Mont. I feel there are
enough contracts to
Protect us now.

Stanley Robbin
Teacher from McCone
Circle, Mont.

Mr. Robbin is also the Chairman of the
McCone Conservation District.

To: Senator Dave Manning
Helena, Montana 59601

March 19, 1975

We the undersigned residents of Garfield Strongly oppose house bill # 581 and recommend that it do not pass because it imposes unfair restrictions on Burt Northern, and at a time when the need for industry and particularly a fertilizer plant is so badly needed. We think that Federal and State regulation will:

Franklin, Pres
Barbara
Frank R. Hogeman
Harlan E. Gray
John E. St. John
Dale E. Fullmer

Garfield County Bank, Jordan
Chairman County Planning Board
Merchand - Jordan
Franklin Jordan Drug Store
Fullmer Inc - Jordan

WU 1231 (R 5-4)

Al Johnson
Sheila Wells
Marge Pharoat
Lloyd R. Buschett
Robert Burgess
Frank E. Loh
John E. Jordan
John E. Jordan
John E. Jordan
William W. Newland

Franklin Jordan
Kemp's Ranch &
Banks's Bacon Co
Jordan Mont
Burgess Repair Shop
Chapman's Jordan
John E. Jordan
John E. Jordan
Hill Creek Bar
Contractor - Jordan

WU 1231 (R 5-4)

MINUTES OF THE MEETING
NATURAL RESOURCES AND FISH & GAME SUBCOMMITTEE
MONTANA STATE SENATE

March 25, 1975

Senator Greg Jergeson, chairman of the subcommittee, called the meeting to order on the above date, 11:00 a.m. in room 405 of the State Capitol Building. Members appointed to the subcommittee are: Senators Roskie, Watt and Jergeson.

ROLL CALL: All members of the subcommittee were present.

CONSIDERATION OF AMENDMENTS TO HB 581: The following people worked on amendments to HB 581:

Mr. Gary Wicks, Director of the Department of Natural Resources;
Mr. Ted Doney, Legal Counsel of Department of Natural Resources;
Mr. Ward A. Shanahan, Dreyer Bros, Inc.;
Mr. Gene Phillips, Pacific Power & Light Co, Decker Coal Co.;
Mr. John Lahr, Montana Power Company.

Others, too, discussed and proposed amendments.

Mr. Wicks stated the amendments themselves can be addressed specifically. The real question is whether the subcommittee will desire to adopt Burlington Northern's proposed amendments to exempt their fertilizer plant. Mr. Wicks issued a statement commenting on some of the impacts being located at in McCone County. The major decision the subcommittee has to make is if they want to change this bill to the Major Facilities Act. He stated the thrust of this act is to minimize the environmental impact of sites that use coal as a base facility. It should be known what problems will be associated towards coal development. Mr. Wicks also pointed out that Montana does not have too many reserves.

Mr. Wicks stated that one of the objections Ward Shanahan had towards the bill is the number of applications they would be required to get before receiving a permit. The Department has not made the determination if the Burlington Northern project comes under this act. Again, Mr. Wicks stressed the importance of impact on communities. Approximately 1,900 will be added to McCone county during this project. Problems will arise in:

1. overcrowding of schools;
2. not enough health care facilities;
3. fire and police protection;
4. employment.

Mr. Shanahan stated that physical environment impacts is being discussed. This bill is broad with no limits. There is no restriction of what is meant by public need. Mr. Shanahan feels that we are looking at unlimited concept of public need. This bill cannot answer specific questions, nor does it have criteria.

Senator Roskie asked Mr. Wicks if the Colstrip project could be compared to what may happen to the Circle project. Mr. Wicks stated that it seems there may be a more severe impact on Circle. Senator Roskie feels the same to be true.

possibly take care of the school problem. Mr. Wicks informed Senator Roskie that the problems regarding Circle will go beyond schools. It will involve fire protection, health services, police facilities, etc.

Senator Watt felt the bill should be changed to "major facilities." He stated that he would, however, like to propose amendments to concur with Shanahan's position. Even though Senator Watt wants the plant to be built, he feels the Department of Natural Resources should know exactly what is taking place. Senator Watt doubted that "public need" could be defined.

Senator Roskie moved to remove non-utility facilities from the provisions of the act. Since the motion was not seconded, it failed.

The subcommittee discussed and viewed Bob Corlette's proposed amendments.

Senator Roskie moved two amendments proposed by Mr. Corlette dealing with page 5 of the bill. Senator Watt seconded this motion; it carried unanimously. (See attached subcommittee report for all amendments.)

The amendment proposed on page 6 dealing with substations was next. Mr. Wicks felt substations should be left in the bill. He didn't have any objection to the distribution of substations.

Mr. Wicks felt the fee schedule shown on page 13, line 2-14, should remain as it is. He said it seems as though the Department could not carry out its responsibility if this fee were lowered.

On page 13, the subcommittee decided to strike subsection (b) in its entirety.

Ted Doney thought the waiver provisions on page 14 of the bill -- if adopted, would hurt the Montana Power Company. Perhaps other language could be drafted and proposed later this afternoon.

Senator Roskie wanted to go on record in support of changing the fee schedule.

Because the session went in today at 1:00 p.m., Senator Jergeson adjourned at 1:30 stating they would meet later on that afternoon to vote on amendments. The Department of Natural Resources and the Power Company decided to work on emergency waiver parts of HB 581.

The members were asked to vote on the remaining amendments. Senator Watt moved on page 12, section 6, line 22, after "certificate", place a period and strike, "and for carrying out its other responsibilities under the act." in lieu thereof, "All fees paid pursuant to this section shall be used as provided and the department upon completion of the necessary work and make accounting to the applicant of the funds expended and refund all unexpended without interest." Mr. Wicks stated his objection to this amendment. There was no second to the motion, it failed.

Senator Watt moved that all amendments previously discussed be adopted. Senator Roskie seconded the motion, and it carried unanimously. (See attached subcommittee report for all amendments.) Senator Watt further moved to place this report before the full committee for approval. Senator Roskie seconded the motion; it carried unanimously.

ADJOURNMENT While doing no further business to discuss, Senator Jergeson
adjourned the subcommittee meeting at 5:30 p.m.



SENATOR GREG JERGESON, CHAIRMAN OF THE
SUBCOMMITTEE ON NATURAL RESOURCES AND
FISH AND GAME

AMENDMENT TO HB 581
(Proposed by Senator Dunkle)

1. Amend page 18, section 7, line 3.

Following: Subsection (3)

Insert: "(4) As an alternative to the study being conducted by the department as provided in this section, the applicant may conduct the study itself at its own expense. When an applicant intends to conduct the study itself, it shall so state in its application, and payment of the filing fees provided in section 70-806 shall be waived and the department is relieved of its responsibility under subsection (1) of this section. A study conducted by an applicant under this subsection is subject to the same requirements as a study conducted by the department. A study made by an applicant shall be reviewed for sufficiency by the department and must be approved by the department before it may be considered final. Upon its final approval, the department shall refer the study to the board, which shall proceed as provided in subsection (5) of this section.

Renumber: Subsequent subsection.

AMENDMENTS TO HB 581 -- SENATE NATURAL RESOURCES AND FISH & GAME COMMITTEE.

1. Amend page 4, section 3, line 4.
Following: line 3
Strike: "processing,"
2. Amend page 5, section 3, line 20.
Following: "capacity of"
Strike: "less than"
3. Amend page 5, section 3, line 21.
Following: "kilovolts"
Insert: "or less"
4. Amend page 6, section 3, line 10.
Following: "dams,"
Insert: "transmission"
5. Amend page 6, section 3, lines 10 and 11.
Following: "substations,"
Strike: "including distribution substations,"
6. Amend page 12, section 6, line 7.
Following: "follows:"
Strike: "three percent (3%)"
Insert: "two percent (2%)"
7. Amend page 12, section 6, line 17.
Following: line 16
Strike: "one-tenth of one percent (0.1%)"
Insert: "one-eighth of one percent (.125%)"
8. Amend page 12, section 6, lines 18 and 19.
Following: "(\$300,000,000)."
Strike: "It is the intent of the legislature that the"
Insert: "The"
9. Amend page 12, section 6, line 20.
Following: "fee"
Insert: "shall"
10. Amend page 12, section 6, line 23.
Following: "act"
Insert: "with respect to the facility covered by the certificate for a period not to exceed five (5) years after certificate is issued for facilities defined in (3)(b) and (c) or not to exceed ~~for~~ ten (10) years after the certificate is issued for facilities defined in 70-803 (3)(a), (d), and (e)"
11. Amend page 13, section 6, lines 2 through 14.

Strike: "processing,"

2. Amend page 5, section 3, line 20.
Following: "capacity of"
Strike: "less than"
3. Amend page 5, section 3, line 21.
Following: "kilovolts"
Insert: "or less"
4. Amend page 6, section 3, line 10.
Following: "dams,"
Insert: "transmission"
5. Amend page 6, section 3, lines 10 and 11.
Following: "substations,"
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for a period not to exceed five (5) years after
certificate is issued for facilities defined in
(3) (b) and (c) or not to exceed ~~for~~ ten (10) ye
after the certificate is issued for facilities
in 70-803 (3) (a), (d), and (e)"
11. Amend page 13, section 6, lines 2 through 14.
Following: line 1
Strike: lines 2 through 14 in their entirety.
Renumber: All subsequent subsections

12. Amend page 13, section 6, lines 15 through ¹⁶17 and 17
Following: "(C)"
Strike: "IF THE BOARD DENIES AN APPLICATION, AND THE BOARD
DECISION IS UPHELD IN ANY SUBSEQUENT COURT PROCEED
13. Amend page 13, section 6, line 17.
Following: "TO"
Insert: "an accounting of moneys expended and to"
14. Amend page 18, section 7, lines 3 through 11.
Following: ~~"(1)"~~
Strike: lines 3 through 11 in their entirety
Insert: "Upon receipt of the department's report submitted
under subsection (1) of this section, the board shall
set a date for a hearing to begin not more than six
(60) days after the receipt."
15. Amend page 20, section 9, lines 7 through 15.
Following: line 6
Strike: lines 7 through 15 in their entirety
Renumber: All subsequent subsections
16. Amend page 25, section 11, line 6.
Following: "(4)"
Insert: "(a)"
17. Amend page 25, section 11, lines 8 through 10.
Following: "BOARD"
Strike: "AFTER A PUBLIC HEARING HELD UNDER THE CONTESTED C
PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE
18. Amend page 25, section 11, line 14.
Following: line 14
Insert: "(b) The board may waive compliance with any of
the provisions of this chapter upon receipt of notice
by a utility or person subject to this chapter that
facility or associated facility has been damaged or
destroyed as a result of a fire, flood or other natural
disaster or as the result of insurrection, war or civil
disorder, and there exists an immediate need for
construction of a new facility or associated facility
or the relocation of a previously existing facility
or associated facility in order to promote the public
welfare."
19. Amend page 39, section 21, line 3.
Following: ~~or~~ "70-804,"
Insert: "a waiver thereof under section 70-811 (4) (b)"

MINUTES OF THE MEETING
NATURAL RESOURCES AND FISH & GAME
MONTANA STATE SENATE

March 25, 1971

Senator Elmer Flynn called an executive session meeting to order of the Natural Resources and Fish & Game Committee, on the above date, in Room 405, in the State Capitol Building, at 9:30 a.m.

ROLL CALL: All members were present.

DISPOSITION OF HB 581: Senator Jergeson, chairman of the subcommittee that studied HB 581 yesterday, informed the committee members of the proposed amendments they adopted. He stated that both utility companies and the Department of Natural Resources agreed with the amendments. Senator Jergeson moved for the adoption of the amendments. The motion was seconded by Senator Roskie; it carried unanimously.

Before taking final action, the committee discussed the bill further. Mr. Ward Shanahan said that their project would be subject to the policy under this act. He further stated that they came under an environmental impact and are presently under the following:

1. Water Use Act
2. Air and water pollution laws
3. Strip Mining Act

Mr. Shanahan said these are physical criteria that they must meet. He said he doesn't feel HB 581 has anything to do with their business as do the other three acts he mentioned above.

Senator Watt feels the bill does direct itself towards other projects beside Mr. Shanahan's.

Senator Smith asked if there will be meetings throughout the state dealing with meeting the public needs. Mr. Wicks informed Senator Smith the question of public needs is difficult to interpret. The basis of the need for the facilities is broadly interpreted that there is a need for the facilities it is applied for. The bill does expand the environmental evaluation. The thrust of the bill would take care of the problems that might develop in local areas when projects exist. Mr. Wicks assured the committee that public participation would be included. There will be public hearings, but it will not necessarily be addressed towards public needs.

Senator Manley asked Mr. Wicks what the bill really adds. Mr. Wicks said the present law does not cover some of the areas this bill would. It was Manley's opinion that the bill was not needed.

Senator Jergeson moved HB 581 be concurred in as amended. The motion was seconded by Senator Watt. Senators Jergeson, Watt, Flynn and Colberg voted for

being tie vote, the bill was reported out of committee AND AS SO AMENDED, WITH RECOMMENDATION. (See roll call vote.) (See standing committee report form for

RECONSIDERATION AND DISPOSITION OF HB 369: House Bill No. 369 was reref back to committee for reconsideration. Senator Roskie said the main area of controversy deals with the taking away the 10 acres which opens it up totally.

Senator Manley moved HB 369 BE NOT CONCURRED IN. The motion was seconded by Senator Roskie and carried unanimously. Senator Roskie did assure the comm that Senator Robert's bill was a similar bill to HB 369. He felt Robert's bill was much more suitable. Senator Roskie said with Senator Robert's bill passed HB 369 was not needed.

CONSIDERATION AND DISPOSITION OF HB 59: Senator Manley felt if amendmen to HB 59 were proposed and adopted, the House would not agree with them anyway they would amend the amendments out of the bill.

Senator Manley moved HB 59 DO NOT PASS. The motion was seconded by Sena Galt.

Senator Jergeson informed Senator Manley that once the bill left this committee, they would not be referred back to the House committee for approval. decision would be made on the floor.

Senator Watt moved a substitute motion that the committee act on amendmen of the bill. Since the bill was still considered indefinitely postponed in the committee due to previous action, Senator Flynn said a motion had to be made to reconsider HB 59. Senator Watt so moved to reconsider HB 59. The motion was seconded by Senator Colberg. Senator Watt stressed the importance of the bill and how it would affect the north fork of the Flathead. Flathead is going to be seriously polluted if something is not done.

It was Senator Manley's argument that this bill would tie all the streams and rivers up in Montana, and it would take all the landowners' rights from them.

Senator Roskie believes it is not the Natural Resources Department's right to have the authority to administer a system of wild, scenic, and recreational river areas. He further feels it not right for streams and rivers to come under this act.

Senator Watt stated that perhaps the committee could amend the bill to include only those larger rivers. Senator Roskie also felt that every large river should not come under this act.

The final action taken on the bill referred back to Senator Watt's substitute motion to reconsider action on the bill. The motion was seconded by Senator Colberg; it failed with five senators voting against. (See roll call vote.) Senator Manley's original motion to kill the bill was considered. A roll call vote was also taken showing five senators in favor of the motion and three against. (See roll call vote.)

ROLL CALL

Natural Resources and Fish & Game COMMITTEE

44th LEGISLATIVE SESSION — 1975

[illegible]

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES AND FISH & GAME

Date Tuesday, March 25, 1975 Bill No. HB 581 Time 10:15 a.m.

NAME	YES	NO
COLBERG, Richard A., Vice-Chairman	X	
JERGESON, Greg	X	
MANLEY, John E.		X
WATT, Robert D.	X	
GALT, Jack E.		X
BOSKIE, George F.		X
SMITH, Edward B.		X
FLYNN, Elmer, Chairman	X	

MARCENE MARSH
Secretary

ELMER FLYNN
Chairman

Motion: Senator Jergeson moved HB 581 be concurred in as amended.

The motion was seconded by Senator Watt. Because of the tie
vote, the bill came out of committee WITHOUT RECOMMENDATION
(with amendments).

(include enough information on motion--put with yellow copy of
committee report)

March 25,

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES AND FISH & GAME

having had under consideration HOUSE Bill No.

Respectfully report as follows: That HOUSE Bill No.
third reading copy, be amended as follows:

1. Amend page 4, section 3, line 4.
Following: line 3
Strike: "processing,"
2. Amend page 5, section 3, line 20.
Following: "capacity of"
Strike: "less than"
3. Amend page 5, section 3, line 21.
Following: "kilovolts"
Insert: "or less"
4. Amend page 6, section 3, line 10.
Following: "dams,"
Insert: "transmission"
5. Amend page 6, section 3, lines 10 and 11.
Following: "substations,"
Strike: "including distribution substations,"

March 25, 1975

Page 2

continued amendments to HB 531

6. Amend page 12, section 6, line 7.
Following: "follows"
Strike: "three percent (3%)"
Insert: "two percent (2%)"
Strike: lines 7 through 15 in their entirety
7. Amend page 12, section 6, line 17.
Following: line 16
Strike: "one-tenth of one percent (0.1%)"
Insert: "one-eighth of one percent (.125%)"
8. Amend page 12, section 6, lines 18 and 19.
Following: "(\$300,000,000)."
Strike: "It is the intent of the legislature that the"
Insert: "The"
9. Amend page 12, section 6, line 20.
Following: "fee"
Insert: "shall"
10. Amend page 12, section 6, line 23. chapter 70-803
Following: "act" or "subject to"
Insert: "with respect to the facility covered by the certificate for a period not to exceed five (5) years after the certificate is issued for facilities fined in 70-803 (3)(b) and (c) or not to exceed ten (10) years after the certificate is issued for facilities defined in 70-803 (3)(a), (d), and (e) fully created or associated facility in order to provide"
11. Amend page 13, section 6, lines 2 through 14.
Following: line 1
Strike: lines 2 through 14 in their entirety
Renumber: All subsequent subsections
12. Amend page 13, section 6, lines 15 through 16 and 17.
Following: "(C)"
Strike: "IF THE BOARD DENIES AN APPLICATION, AND THE BOARD'S DECISION IS UPHOLD IN ANY SUBSEQUENT COURT PROCEEDING,"
13. Amend page 13, section 6, line 17.
Following: "TO"
Insert: "an accounting of moneys expended and to"
14. Amend page 13, section 7, lines 6 through 11.
Following: "receipt"
Strike: lines 6 through 11 in their entirety
Insert: "Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a date for a hearing to begin not more than sixty"

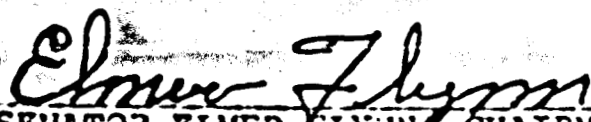
March 25, 1975

Page 3

continued amendments to HB 581

5. Amend page 20, section 9, lines 7 through 15.
Following: line 6
Strike: lines 7 through 15 in their entirety
Renumber: Subsequent subsection
6. Amend page 25, section 11, line 6.
Following: "(4)"
Insert: "(a)"
7. Amend page 25, section 11, lines 8 through 10.
Following: "BOARD"
Strike: ", AFTER A PUBLIC HEARING HELD UNDER THE CONTESTED CASE
PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT
8. Amend page 25, section 11, line 14.
Following: line 14
Insert: "(b) The board may waive compliance with any of
the provisions of this chapter upon receipt of notice
by a utility or person subject to this chapter that
a facility or associated facility has been damaged or
destroyed as a result of fire, flood or other natural
disaster or as the result of insurrection, war or other
civil disorder, and there exists an immediate need for
construction of a new facility or associated facility
or the relocation of a previously existing facility
or associated facility in order to promote the public
welfare."
9. Amend page 39, section 21, line 3.
Following: "70-804,"
Insert: "a waiver thereof under section 70-811 (4) (b)"

Notice: Bill moved to
AND AS SO AMENDED, WITHOUT RECOMMENDATION


SENATOR ELMER FLYNN, CHAIRMAN

HOUSE BILL NO. 581

INTRODUCED BY BARDANOUVE, MELOY, HUEHNEMANN, KENNIS, VINCENT,
LIEN, DRISCOLL, GUNDERSON, HARPER, BRADLEY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
70-801 THROUGH ~~70-802, 70-810~~ THROUGH 70-823, R.C.M. 1947,
TO GENERALLY REVISE THE MONTANA UTILITY SITING ACT OF 1973;
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-801, R.C.M. 1947, is amended to
read as follows:

"70-801. Short title. This ~~act~~ chapter shall be known
and may be cited as the Montana Utility MAJOR FACILITY
Siting Act of 1973."

Section 2. Section 70-802, R.C.M. 1947, is amended to
read as follows:

"70-802. Policy and legislative findings. It is the
constitutionally declared policy of this state to maintain
and improve a clean and healthful environment for present
and future generations; to protect the environmental life
support system from degradation and prevent unreasonable
depletion and degradation of natural resources; and to
provide for administration and enforcement to attain these
objectives.

The legislature finds that the construction of
additional power ~~and or~~ energy conversion facilities may be
necessary to meet the increasing need for electricity, ~~and~~
~~other energy, and other products,~~ and that ~~such these~~
facilities have an effect on the environment, an impact on
population concentration, and an effect on the welfare of
the citizens of this state. Therefore, it is necessary to
ensure that the location, construction and operation of
power and energy conversion facilities will produce minimal
adverse effects on the environment and upon the citizens of
this state by providing that ~~a~~ power or energy conversion
facility ~~shall hereafter~~ may not be constructed or operated
within this state without a certificate of environmental
compatibility and public need acquired pursuant to this ~~act~~
chapter."

Section 3. Section 70-803, R.C.M. 1947, is amended to
read as follows:

"70-803. Definitions. ~~The following words, when used~~
~~in this act, shall have the following meanings unless~~
~~otherwise clearly apparent from the context~~ In this chapter,
unless the context requires otherwise:

(1) ~~the word "department"~~ "Department" means the
department of natural resources and conservation provided
for in Title 82A, chapter 15.

(2) ~~the word "board"~~ "Board" means the board of

natural resources and conservation provided for in section 82A-1509.

(3) ~~the words "utility facility" or "facility" mean~~
"Facility" means:

(a) ~~any energy generating and conversion each plant, unit, or other facility and associated facilities, except for oil and gas refineries.~~

(i) designed for, or capable of, generating ~~at~~ fifty (50) megawatts of electricity or more, or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(ii) designed for, or capable of, producing ~~one hundred million (100,000,000) twenty-five million (25,000,000)~~ cubic feet of gas per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iii) designed for, or capable of, producing ~~fifty thousand (50,000) twenty-five thousand (25,000)~~ barrels of liquid hydrocarbon products per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iv) designed for, or capable of, enriching uranium minerals, or any addition thereto having an estimated cost

in excess of two hundred fifty thousand dollars (\$250,000),

or

(v) designed for, or capable of, utilizing, refining, processing, or converting five hundred thousand (500,000) tons of coal per year or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000);

(b) ~~as~~ each electric transmission line and associated facilities of a design capacity of ~~thirty-four and one-half (34.5) more than sixty-nine (69)~~ kilovolts or more, except that ~~the following transmission lines and associated facilities shall be subject to certain exceptions under the act:~~

~~(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,~~

~~(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,~~

~~(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or~~

~~less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806 (1)] and section 7, subsection (1) [70-807 (1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,~~

~~(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) [70-806 (1)], and the six hundred (600) day requirement of section 7, subsection (1) [70-807 (1)],~~

~~(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii); the term does not include an electric transmission line and associated facilities of a design capacity of less than two hundred thirty (230) kilovolts OR LESS and ten (10) miles or less in length;~~

~~(c) a gas or liquid transmission line each pipeline and associated facilities designed for, or capable of, transporting gas, water, or liquid hydrocarbon products from or to a gasification or liquefaction facility located~~

within or without this state of the size indicated in subsections (a) (ii) and (a) (iii) subsection (3) (a) of this section;

~~(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy;~~

(e) any underground in situ gasification of coal.

~~(4) the words "associated~~ "Associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams, TRANSMISSION substations, ~~including distribution substations,~~ storage ponds, reservoirs, and any other device or equipment associated with the production, or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

~~(5) the words "commence~~ "Commence to construct" ~~mean~~ means:

~~(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a utility facility, but do does not include mean~~ changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. ~~The words do include the commencement of eminent domain proceedings under Title 93, chapter 99,~~

~~R.C.M. 1947, for land or rights of way upon which a utility facility may be constructed;~~

(b) the fracturing of underground formations by any means, if any such activity is related to the possible future development of ~~an underground utility~~ a gasification facility or a facility employing geothermal resources, but ~~it does~~ not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 93, chapter 99, for land or rights of way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (3) (b) or (c), including upgrading to a design capacity covered by subsection (3) (b), except that the term does not include normal maintenance or repair of an existing facility.

(5) ~~the word "municipality"~~ "Municipality" means any county or municipality within this state.

(7) ~~the word "person" includes~~ "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(8) ~~the words "public utility" or "utility" mean~~ "Utility" means any person engaged in any aspect of the

production, storage, sale, delivery or furnishing of heat, electricity, gas, HYDROCARBON PRODUCTS or energy in any form for ultimate public use.

(9) ~~"certificate"~~ "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter and that is required for the construction or operation of ~~any~~ a facility.

(10) "ADDITION THERETO" MEANS THE INSTALLATION OF NEW MACHINERY AND EQUIPMENT WHICH WOULD SIGNIFICANTLY CHANGE THE CONDITIONS UNDER WHICH THE CERTIFICATE WAS ISSUED."

Section 4. Section 70-804, R.C.M. 1947, is amended to read as follows:

"70-804. Certificate from board required prior to construction of ~~utility facility-exemptions~~. (1) ~~No~~ A person ~~shall~~ may not commence to construct a ~~utility~~ facility in the state without first ~~having obtained~~ applying for and obtaining a certificate of environmental compatibility and public need issued with respect to ~~such~~ the facility by the board. ~~Any~~ A facility, with respect to which a certificate is ~~required~~ issued, ~~shall~~ may not thereafter be constructed, operated ~~and~~ or maintained ~~except~~ in conformity with ~~such~~ the certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this ~~act~~ chapter.

(2) A certificate may be transferred, subject to the

approval of the department, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) This ~~act shall~~ chapter does not apply to any ~~utility~~ a facility over which an agency of the federal government has exclusive jurisdiction.

(4) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that would otherwise be covered by this chapter and that is unlikely to have a significant environmental impact by reason of length, size, location, available space or right of way, or construction methods.

(5) A certificate is not required under this chapter for a facility under diligent on site physical construction or in operation on January 1, 1973."

Section 5. Section 70-805, R.C.M. 1947, is amended to read as follows:

"70-805. Surcharge on electric energy producer's license tax—administrative expenses—tax on gasification, liquefaction, uranium enrichment facilities. (1) Every "producer" as defined in chapter 16 of Title 84, ~~the electrical energy producers' license tax~~, shall, in addition to the sum required to be paid by that ~~act~~ chapter, pay an additional twenty-five hundredths percent (0.25%) of the

gross amount as shown on the statement which is required by that ~~act~~ chapter, in the same manner and within the time provided by that ~~act~~ chapter. The ~~state board of equalization department of revenue~~ shall report to the state treasurer separately the amount transmitted to the state treasurer which is added to the electrical energy producers' license tax by this section ~~of this act~~.

(2) The legislature shall appropriate sufficient funds to finance the department's activities in carrying out its duties under this ~~act~~ chapter. The legislature shall provide a tax on gasification, liquefaction, coal conversion, and uranium enrichment facilities sufficient to produce an amount of revenue equal to that derived from electrical energy producers under this section."

Section 6. Section 70-806, R.C.M. 1947, is amended to read as follows:

"70-806. Application for certification—~~filing and contents filing fees use of filing fees notice of completion of facility—further fees—REFUND—proof of service on municipalities—waiver of time requirement amendment of application or certification.~~ (1) (a) At least ~~two~~ (2) ~~years prior to anticipated commencement of construction of a utility facility as defined in sections 70-803 (3) (a), 70-803 (3) (b) (iv), 70-803 (3) (c), and 70-803 (3) (d) and at least nine (9) months prior to the~~

~~anticipated commencement date of the construction of a utility facility as defined in section 70-803 (3) (b) (iii),~~
~~an~~ An applicant for a certificate shall file with the department ~~as a~~ verified application, in such form as the department ~~may prescribe~~ board by rule or the department by order prescribes, containing the following information:

~~(a) (i)~~ a description of the location and of the utility facility to be built thereon;

~~(b) (ii)~~ a summary of any studies which have been made of the environmental impact of the facility;

~~(c) (iii)~~ a statement explaining the need for the facility;

~~(d) (iv)~~ a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

~~(e) (v)~~ such other information as the applicant ~~may consider~~ considers relevant or as the ~~board by rule or the department may by regulation or order require~~ requires. A copy or copies of the studies referred to in clause ~~(b) (ii)~~ above shall be filed with the department, if ordered, and shall be available for public inspection.

(b) An application may consist of an application for

two (2) or more facilities in combination, such as power units and transmission lines WHICH ARE PHYSICALLY AND DIRECTLY ATTACHED TO EACH OTHER AND ARE OPERATIONALLY A SINGLE OPERATING ENTITY.

(2) ~~(a) A filing fee shall be deposited in the state general fund. Said fee shall be~~ The applicant shall pay to the department a filing fee with the application, based upon the estimated cost of the facility according to the declining scale which follows: The applicant shall pay the accumulated sum calculated as follows: three percent (3%) TWO PERCENT (2%) of any estimated cost up to one million dollars (\$1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000); and up to one hundred million dollars (\$100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-tenth of one percent (0.1%) ONE-EIGHTH OF ONE PERCENT (.125%) of any amount of estimated cost over three hundred million dollars (\$300,000,000). It is the intent of the legislature that the ~~THE~~ revenues derived from the filing fee SHALL be used by the department in compiling the information required for rendering a decision on a

certificate and for carrying out its other responsibilities under this act WITH RESPECT TO THE FACILITY COVERED BY THE CERTIFICATE FOR A PERIOD NOT TO EXCEED FIVE (5) YEARS AFTER THE CERTIFICATE IS ISSUED FOR FACILITIES DEFINED IN 70-803 (3) (B) AND (C) OR NOT TO EXCEED TEN (10) YEARS AFTER THE CERTIFICATE IS ISSUED FOR FACILITIES DEFINED IN 70-803 (3) (A), (D), AND (E). If an application consists of a combination of two (2) or more facilities, the filing fee shall be the total of the fees based on the TOTAL estimated cost of each facility considered separately THE COMBINED FACILITIES.

~~(b) If a certificate is issued by the board for the proposed facility, immediately upon completion of construction of the facility the applicant shall give a notice of completion to the department. As soon as possible after giving the notice of completion, the applicant shall file an affidavit with the department stating the actual cost of the facility in such detail as the department may require to determine whether a further fee is due. If the actual cost exceeds the estimated cost, the applicant shall file a further fee for the difference based upon the declining scale in subsection (2) (a) of this section. No further fee is required, however, if it is computed to be five hundred dollars (\$500) or less.~~

~~(6) (B) IF THE BOARD DENIES AN APPLICATION, AND THE~~

~~BOARD'S DECISION IS UPHOLD IN ANY SUBSEQUENT COURT PROCEEDING, THE APPLICANT IS ENTITLED TO AN ACCOUNTING OF MONIES EXPENDED AND TO A REFUND OF THAT PORTION OF THE FILING FEE NOT EXPENDED BY THE DEPARTMENT IN CARRYING OUT ITS RESPONSIBILITIES UNDER THIS CHAPTER.~~

~~(b) (C) THE DEPARTMENT MAY CONTRACT WITH A POTENTIAL APPLICANT UNDER THIS CHAPTER, IN ADVANCE OF THE FILING OF A FORMAL APPLICATION, FOR THE DEVELOPMENT OF INFORMATION OR PROVISION OF SERVICES REQUIRED HEREUNDER. PAYMENTS MADE TO THE DEPARTMENT UNDER SUCH A CONTRACT SHALL BE CREDITED AGAINST THE FEE PAYABLE HEREUNDER.~~

(3) Each an application shall be accompanied by proof of service of a copy of such the application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such the facility is to be located, both as primarily and as alternatively proposed. The copy of such the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each an application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which

1 it is to be filed, in such those newspapers as will serve
2 substantially to inform such those persons of the
3 application.

4 (5) Inadvertent failure of service on, or notice to,
5 any of the municipalities, government agencies or persons
6 identified in subsections (3) and (4) of this section may be
7 cured pursuant to orders of the department designed to
8 afford them adequate notice to enable their effective
9 participation in the proceeding. In addition, the department
10 may, after filing, require the applicant to serve notice of
11 the application or copies thereof or both upon such other
12 persons, and file proof thereof, as the department may deem
13 appropriate.

14 (6) An application for an amendment of an application
15 or a certificate shall be in such form and contain such
16 information as the department shall prescribe board by rule
17 or the department by order prescribes. Notice of such an
18 application shall be given as set forth in subsections (3)
19 and (4) of this section. If an amendment to an original
20 application would result in a substantial change of the
21 original application, such an amendment shall be considered
22 as a new application and a new filing fee shall be required.

23 ~~(7) The board may waive compliance with the time limit~~
24 ~~of this section if an applicant makes a clear and convincing~~
25 ~~showing that an immediate need for a facility exists and~~

1 ~~that the applicant did not have knowledge that the need~~
2 ~~existed sufficiently in advance of the need to file an~~
3 ~~application within the time provided in subsection (1) of~~
4 ~~this section.~~

5 ~~(8) The board may, in its discretion, waive the~~
6 ~~necessity of filing an application where utility facilities~~
7 ~~are being relocated pursuant to sections 32-2414 through~~
8 ~~32-2416, R.C.M. 1947, and where it is satisfied after an~~
9 ~~examination of the environmental impact statement filed~~
10 ~~pursuant to chapter 65 of Title 69, R.C.M. 1947, that such~~
11 ~~relocation will not significantly affect the environment."~~

12 Section 7. Section 70-807, R.C.M. 1947, is amended to
13 read as follows:

14 "70-807. Study, evaluation and report on proposed
15 facility hearing on application for amendment of
16 certificate hearings. (1) Upon receipt of an application
17 complying with section 70-806, the department shall commence
18 an intensive study and evaluation of the proposed facility
19 and its effects, ~~pursuant to section 70-816 of this act~~
20 considering all the criteria listed in sections 70-810 and
21 70-816. Within ~~six hundred (600) days~~ two (2) years
22 following receipt of the an application for a facility as
23 defined in ~~sections~~ subsections 70-803 (3) (a), ~~70-803 (b)~~
24 ~~(iv), 70-803 (3) (e), and 70-803 (3) (d)~~ and for a facility
25 as defined in subsections 70-803 (3) (b) and (c) which is

1 ~~more than thirty (30) miles in length, and within one~~
 2 ~~hundred eighty (180) days one (1) year~~ for a facility as
 3 ~~defined in sections 70-803 (b) (iii) subsections 70-803 (3)~~
 4 ~~(b) and (c) which is thirty (30) miles or less in length,~~
 5 the department shall make a report to the board, which shall
 6 contain the department's studies, evaluations,
 7 recommendations, other pertinent documents resulting from
 8 its study and evaluation pursuant to section 70-816 of this
 9 act, and the final environmental impact statement. ~~If the~~
 10 ~~application is for a facility which was not listed or~~
 11 ~~proposed in a long range plan submitted by the applicant to~~
 12 ~~the department at least six (6) months before the filing of~~
 13 ~~the application pursuant to section 70-814, the department~~
 14 ~~shall then have three (3) years and two (2) years,~~
 15 ~~respectively, to make its report to the board. If the~~
 16 ~~application is for a combination of two (2) or more~~
 17 ~~facilities, the department shall make its report to the~~
 18 ~~board within the greater of the lengths of time provided for~~
 19 ~~in this subsection for either of the facilities.~~

20 (2) The departments of health and environmental
 21 sciences, highways, intergovernmental relations, fish and
 22 game, and public service regulation shall report to the
 23 department information relating to the impact of the
 24 proposed site on each department's area of expertise. Such
 25 information The report may include opinions as to the

1 advisability of granting, ~~or denying, or modifying~~ the
 2 certificate. The department shall allocate funds obtained
 3 from filing fees to the departments making reports to
 4 reimburse them for the costs of compiling information and
 5 issuing the required report.

6 ~~(2) (3)~~ On an application for an amendment of a
 7 certificate, the board shall hold a hearing in the same
 8 manner as a hearing is held on an application for a
 9 certificate if the proposed change in the facility would
 10 result in any material increase in any environmental impact
 11 of the facility or a substantial change in the location of
 12 all or a portion of such the facility other than as provided
 13 in the alternates set forth in the application.

14 ~~(2) (4)~~ Upon receipt of the department's report
 15 submitted under subsection (1) of this section, the board
 16 shall set a hearing date for a hearing to begin not more
 17 than sixty (60) days after such the receipt. ~~WITHIN SIXTY~~
 18 ~~(60) DAYS AFTER RECEIPT OF THE DEPARTMENT'S REPORT SUBMITTED~~
 19 ~~UNDER SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL SET A~~
 20 ~~DATE FOR THE CERTIFICATION HEARING, WHICH SHALL COMMENCE~~
 21 ~~WITHIN SIX (6) MONTHS AFTER RECEIPT OF THE DEPARTMENT'S~~
 22 ~~REPORT, UPON RECEIPT OF THE DEPARTMENT'S REPORT SUBMITTED~~
 23 ~~UNDER SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL SET A~~
 24 ~~DATE FOR A HEARING TO BEGIN NOT MORE THAN SIXTY (60) DAYS~~
 25 ~~AFTER THE RECEIPT, UPON RECEIPT OF THE DEPARTMENT'S REPORT~~

SUBMITTED UNDER SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL SET A DATE FOR A HEARING TO BEGIN NOT MORE THAN ONE HUNDRED TWENTY (120) DAYS AFTER THE RECEIPT; EXCEPT FOR THOSE HEARINGS INVOLVING APPLICATIONS SUBMITTED FOR FACILITIES AS DEFINED IN SECTION 70-803(3) (B) AND (3) (C), CERTIFICATION HEARINGS SHALL BE CONDUCTED BY THE BOARD IN THE COUNTY SEAT OF LEWIS AND CLARK COUNTY OR THE COUNTY IN WHICH THE FACILITY, OR THE GREATER PORTION THEREOF, IS TO BE LOCATED.

Section 8. Section 70-808, R.C.M. 1947, is amended to read as follows:

"70-808. Parties to certification proceeding—waiver by failure to participate. (1) The parties to a certification proceeding include:

(a) the applicant;

(b) each municipality and government agency entitled to receive service of a copy of the application under subsection (3) of section 6 [70-806 (3)] of this act 70-806 (3); and

(c) ~~any person residing in a municipality entitled to receive service of a copy of the application under subsection (4) of section 6 [70-806 (4)] of this act 70-806 (4); any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to~~

~~preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and any person who can demonstrate to the satisfaction of a majority of the board prior to the commencement of the proceeding that such person would be directly affected by the construction or operation of the proposed facility. Any person residing in a municipality entitled to receive service of a copy of the application under subsection (4) of section 6 [70-806 (4)] of this act 70-806 (4); any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and~~

(d) the department.

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing before the board."

SECTION 9. SECTION 70-809, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

*70-809. Record of hearing — procedure — rules of evidence — burden of proof. (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act [~~82-4201 to 82-4225~~] (Title 82, chapter 42, R.C.M. 1947) shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

(2) In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of section 70-810 are met.

~~(3) Any party to a certification proceeding held under this chapter may conduct prehearing discovery of all other known parties, including obtaining subpoenas of witnesses and subpoenas duces tecum for the production of such books, records, papers, documents and other objects as may be necessary and proper for the purposes of the proceeding, and the taking of testimony by deposition upon oral examination~~

~~or written interrogatories for the purpose of discovery or for use as evidence in the hearing or for both purposes.~~

~~(4) (3) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board or an employee of the department.~~

Section 10. Section 70-810, R.C.M. 1947, is amended to read as follows:

*70-810. Decision of board—findings necessary for certificate—conditions imposed—service of decision on parties. (1) ~~The~~ Within ninety (90) days after the last day of the hearing, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the ~~utility~~ facility as the board ~~may deem~~ considers appropriate. The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various

alternatives;

(d) each of the criteria listed in section 46-~~70-816~~
~~of this act 70-816~~;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that ~~such the~~ facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that ~~such facilities the facility~~ will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, ~~such the~~ law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience and necessity; and

(h) that duly authorized state ~~and federal~~ air and water quality agencies have certified that the proposed facility will not violate state and federally established

standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, ~~shall~~ have been given reasonable notice of the modification.

(3) ~~A copy of the decision and any opinion issued with the decision shall be served upon each party. In determining that the facility will serve the public interest, convenience, and necessity under subsection (1) (q) of this section, the board shall consider:~~

(i) the items listed in subsections (1) (a) through (b) of this section;

(ii) the benefits to the applicant and the state resulting from the proposed facility;

(iii) the effects of the economic activity resulting from the proposed facility;

(iv) the effects of the proposed facility on the public health, welfare, and safety;

(v) any other factors that it considers relevant.

(4) CONSIDERATIONS OF NEED, PUBLIC NEED, OR PUBLIC

CONVENIENCE AND NECESSITY, AND DEMONSTRATION THEREOF BY THE APPLICANT, SHALL APPLY ONLY TO UTILITY FACILITIES."

Section 11. Section 70-811, R.C.M. 1947, is amended to read as follows:

"70-811. Opinion issued with decision—contents of certificate—waiver of time requirements—facilities for which certificate required. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (f) of subsection (4) of section 40 [70-810 (4) (f)] of this act subsection 70-810 (1) (f), it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

(a) An environmental evaluation statement related to the facilities facility being certified. The statement shall include, but not be limited to, analysis of the following information:

- (i) the environmental impact of the proposed facility;
- (ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;
- (iii) problems and objections raised by other federal

and state agencies and interested groups;

(iv) alternatives to the proposed ~~facilities~~ facility;

and

(v) a plan for monitoring environmental effects of the proposed facility.

(b) A statement signed by the applicant showing agreement to comply with the requirements of this act chapter and the conditions of the certificate.

(3) ~~The time requirement of section 6 [70-806] 70-806 and any ANY of the provisions described in sections 7 through 11 [70-807 to 70-811] of this act 70-807 through 70-811 may be waived by the board, for good cause shown, with respect to applications filed before January 1, 1975. Applications for certificates under this subsection (3) must be promptly filed. A certificate is not required under this act for facilities under construction or in operation on January 1, 1973. However, a certificate must be obtained for associated facilities upon which construction has not commenced before January 1, 1973, subject to the waiver provisions of this subsection.~~

(4) (A) THE BOARD MAY WAIVE COMPLIANCE WITH ANY OF THE PROVISIONS OF SECTIONS 70-807 THROUGH 70-811 IF THE APPLICANT MAKES A CLEAR AND CONVINCING SHOWING TO THE BOARD, AFTER A PUBLIC HEARING HELD UNDER THE CONTESTED CASE PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, AT A

PUBLIC HEARING THAT AN IMMEDIATE, URGENT NEED FOR A FACILITY EXISTS AND THAT THE APPLICANT DID NOT HAVE KNOWLEDGE THAT THE NEED FOR THE FACILITY EXISTED SUFFICIENTLY IN ADVANCE TO FULLY COMPLY WITH THE PROVISIONS OF SECTIONS 70-807 THROUGH 70-811.

(B) THE BOARD MAY WAIVE COMPLIANCE WITH ANY OF THE PROVISIONS OF THIS CHAPTER UPON RECEIPT OF NOTICE BY A UTILITY OR PERSON SUBJECT TO THIS CHAPTER THAT A FACILITY OR ASSOCIATED FACILITY HAS BEEN DAMAGED OR DESTROYED AS A RESULT OF FIRE, FLOOD OR OTHER NATURAL DISASTER OR AS THE RESULT OF INSURRECTION, WAR OR OTHER CIVIL DISORDER, AND THERE EXISTS AN IMMEDIATE NEED FOR CONSTRUCTION OF A NEW FACILITY OR ASSOCIATED FACILITY OR THE RELOCATION OF A PREVIOUSLY EXISTING FACILITY OR ASSOCIATED FACILITY IN ORDER TO PROMOTE THE PUBLIC WELFARE."

Section 12. Section 70-812, R.C.M. 1947, is amended to read as follows:

"70-812. Review of denial of certificate by board—procedure Judicial review of board decision. (1) Any party as defined in section 8 [70-808] of this act 70-808 aggrieved by the final decision of the board on an application for a certificate, may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction, within thirty (30) days after the issuance of such final decision. Upon receipt

of such petition, the department shall deliver to the court a copy of the written transcript of the record of the proceeding before it and a copy of the board's decision and opinion entered therein which shall constitute the record on judicial review. A copy of such transcript, decision and opinion shall remain on file with the department and shall be available for public inspection.

(2) If a decision is issued after a hearing on an application for a certificate, such decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act [82-4201 to 82-4225]."

Section 13. Section 70-813, R.C.M. 1947, is amended to read as follows:

"70-813. Jurisdiction of courts restricted. Except as expressly set forth in sections 42, 47 and 21 [70-812, 70-817 and 70-821] of this act 70-812, 70-817, and 70-821, no court of this state shall have has jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the board under this act chapter or to stop or delay the construction, operation or maintenance of a utility facility, except to enforce compliance with this act chapter or the provisions of a certificate issued hereunder pursuant to sections 49 or 21 [70-819 or 70-821]

1 ~~of this act 70-819 or 70-821."~~

2 Section 14. Section 70-814, R.C.M. 1947, is amended to
3 read as follows:

4 "70-814. Annual long-range plan submitted—
5 contents—available to public. (1) Each utility, and each
6 person contemplating the construction of a facility within
7 this state in the ensuing ten (10) years, shall furnish
8 annually to the department for its review, a long-range plan
9 for the construction and operation of utility facilities.
10 ~~Each. The~~ plan shall be submitted on April 1 of each year,
11 ~~The plan and~~ shall include the following:

12 (a) the general location, size and type of all utility
13 facilities to be owned and operated by the utility or person
14 whose construction is projected to commence during the
15 ensuing ten (10) years, as well as those facilities to be
16 removed from service during the planning period;

17 (b) IN THE CASE OF ENERGY-PRODUCING UTILITY FACILITIES
18 a description of efforts by the utility or person to
19 coordinate the plan with other utilities or persons so as to
20 provide a coordinated regional plan for meeting the utility
21 facilities ENERGY needs of the region;

22 (c) a description of the efforts to involve
23 environmental protection and land use planning agencies in
24 the planning process, as well as other efforts to identify
25 and minimize environmental problems at the earliest possible

1 stage in the planning process;

2 (d) projections of the demand for the service rendered
3 by the utility or person and explanation of the basis for
4 ~~each~~ those projections, and a description of the manner and
5 extent to which the proposed facilities will meet the
6 projected demand; and

7 (e) additional information that the board by rule or
8 the department on its own initiative or upon the advice of
9 interested state agencies might request in order to carry
10 out the purposes of this ~~act~~ chapter.

11 (2) The plan shall be made available to the public by
12 the department, and the utility or person shall be ~~required~~
13 ~~to~~ give public notice throughout the state of its plan by
14 filing the plan with the environmental quality council, the
15 department of health and environmental ~~science~~ sciences, the
16 department of highways, the department of public service
17 regulation, the department of state lands and the department
18 of intergovernmental relations. Citizen environmental
19 protection and resource planning groups, and other
20 interested persons may obtain a plan by written request and
21 payment therefor to the department."

22 Section 15. Section 70-815, R.C.M. 1947, is amended to
23 read as follows:

24 "70-815. Study of planned facilities included in
25 annual long-range report. If a utility or person lists and

identifies a proposed ~~utility~~ facility in its plan, submitted pursuant to section ~~14~~ ~~[70-814]~~ ~~of this act~~ ~~70-814~~, as one on which construction is proposed to be commenced within the five (5) year period ~~next proceeding~~ following submission of the plan, the department shall commence examination and evaluation of the proposed site to determine whether construction of the proposed facility would unduly impair the environmental values in section ~~14~~ ~~[70-814]~~ ~~of this act~~ 70-816. This study may be continued until such time as a utility person files an application for a certificate under section ~~6~~ ~~[70-806]~~ ~~of this act~~ 70-806. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate."

Section 16. Section 70-816, R.C.B. 1947, is amended to read as follows:

"70-816. Environmental factors considered in evaluating long-range plans. In evaluating long-range plans, conducting five-year site reviews, and evaluating applications for certificates ~~of site and facility~~, the board and department shall give consideration to the following list of environmental factors ~~and may, by regulation rule, add to the categories of this section~~ AND MAY, BY REGULATION RULE, ADD TO THE CATEGORIES OF THIS SECTION:

(1) Energy needs.

(a) Growth in demand and projections of need.

(b) Availability and desirability of alternative sources of energy.

(c) Availability and desirability of alternative sources of energy in lieu of the proposed facility.

(d) Promotional activities of the utility which may have given rise to the need for this facility.

(e) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality.

(f) Conservation activities which could reduce the need for more energy.

(g) Research activities of the utility of new technology available to it which might minimize environmental impact.

(2) Land use impacts.

(a) Area of land required and ultimate use.

(b) Consistency with areawide state and regional land use plans.

(c) Consistency with existing and projected nearby land use.

(d) Alternative uses of the site.

(e) Impact on population already in the area; population attracted by construction or operation of the

1 facility itself; impact of availability of energy from this
 2 facility on growth patterns and population dispersal.
 3 (f) Geologic suitability of the site or route.
 4 (g) Seismologic characteristics.
 5 (h) Construction practices.
 6 (i) Extent of erosion, scouring, wasting of land—both
 7 at site and as a result of fossil fuel demands of the
 8 facility.
 9 (j) Corridor design and construction precautions for
 10 transmission lines or aqueducts.
 11 (k) Scenic impacts.
 12 (l) Effects on natural systems, wildlife, plant life.
 13 (m) Impacts on important historic architectural,
 14 archeological, and cultural areas and features.
 15 (n) Extent of recreation opportunities and related
 16 compatible uses.
 17 (o) Public recreation plan for the project.
 18 (p) Public facilities and accommodation.
 19 (q) Opportunities for joint use with energy intensive
 20 industries, or other activities to utilize the waste heat
 21 from facilities.
 22 (3) Water resources impacts.
 23 (a) Hydrologic studies of adequacy of water supply and
 24 impact of facility on stream flow, lakes and reservoirs.
 25 (b) Hydrologic studies of impact of facilities on

1 ground water.
 2 (c) Cooling system evaluation including consideration
 3 of alternatives.
 4 (d) Inventory of effluents including physical,
 5 chemical, biological, and radiological characteristics.
 6 (e) Hydrologic studies of effects of effluents on
 7 receiving waters, including mixing characteristics of
 8 receiving waters, changed evaporation due to temperature
 9 differentials, and effect of discharge on bottom sediments.
 10 (f) Relationship to water quality standards.
 11 (g) Effects of changes in quantity and quality on
 12 water use by others, including both withdrawal and in situ
 13 uses; relationship to projected uses; relationship to water
 14 rights.
 15 (h) Effects on plant and animal life, including algae,
 16 macroinvertebrates, and fish population.
 17 (i) Effects on unique or otherwise significant
 18 ecosystems; e.g., wetlands.
 19 (j) Monitoring programs.
 20 (4) Air quality impacts.
 21 (a) Meteorology. Wind direction and velocity, ambient
 22 temperature ranges, precipitation values, inversion
 23 occurrence, other effects on dispersion.
 24 (b) Topography. Factors affecting dispersion.
 25 (c) Standards in effect and projected for emissions,

1 design capability to meet standards.

2 (d) Emissions and controls.

3 (i) Stack design.

4 (ii) Particulates.

5 (iii) Sulfur Oxides.

6 (iv) Oxides of Nitrogen.

7 (v) Heavy metals, trace elements, radioactive
8 materials and other toxic substances.

9 (e) Relationship to present and projected air quality
10 of the area.

11 (f) Monitoring program.

12 (5) Solid wastes impact.

13 (a) Solid waste inventory.

14 (b) Disposal program.

15 (c) Relationship of disposal practices to
16 environmental quality criteria.

17 (d) Capacity of disposal sites to accept projected
18 waste loadings.

19 (6) Radiation impacts.

20 (a) Land use controls over development and population.

21 (b) Wastes and associated disposal program for solid,
22 liquid, radioactive and gaseous wastes.

23 (c) Analyses and studies of the adequacy of
24 engineering safeguards and operating procedures.

25 (d) Monitoring. Adequacy of devices and sampling

1 techniques.

2 (7) Noise impacts.

3 (a) Construction period levels.

4 (b) Operational levels.

5 (c) Relationship of present and projected noise levels
6 to existing and potential stricter noise standards.

7 (d) Monitoring. Adequacy of devices and methods."

8 Section 17. Section 70-817, R.C.M. 1947, is amended to
9 read as follows:

10 "70-817. Additional requirements by other governmental
11 agencies not permitted after issuance of certificate—
12 exceptions. Notwithstanding any other ~~provision of~~ law, no
13 state or regional agency, or municipality or other local
14 government, may require any approval, consent, permit,
15 certificate, or other condition for the construction,
16 operation, or maintenance of a ~~utility~~ facility authorized
17 by a certificate issued pursuant to the ~~provisions of this~~
18 ~~act chapter~~; except that the state air and water quality
19 agency or agencies shall retain authority which they have or
20 may be granted to determine compliance of the proposed
21 facility with state and federal standards and implementation
22 plans for air and water quality and to enforce those
23 standards. ~~Nothing in this act shall~~ This chapter does not
24 prevent the application of state laws for the protection of
25 employees engaged in the construction, operation or

1 maintenance of such a facility."

2 Section 18. Section 70-818, R.C.M. 1947, is amended to
3 read as follows:

4 "70-818. Revocation or suspension of certificate—
5 voiding of application. (1) A certificate may be revoked
6 or suspended by the board:

7 (1) (a) for any material false statement in the
8 application or in accompanying statements or studies
9 required of the applicant, if a true statement would have
10 warranted the board's refusal to grant a certificate; or

11 (2) (b) for failure to maintain safety standards or to
12 comply with the terms or conditions of the certificate; or

13 (3) (c) for violation of ~~the provisions~~ any provision
14 of this act chapter, the ~~regulations~~ rules issued
15 thereunder, or orders of the board or department.

16 (2) An application may be voided by the department:

17 (a) for any material AND KNOWINGLY false statement in
18 the application or in accompanying statements or studies
19 required of the applicant;

20 (b) for failure to file an application in
21 substantially the form and content required by this chapter
22 and the rules adopted thereunder; or

23 (c) for failure to deposit the filing fee with the
24 application as required by section 70-806."

25 Section 19. Section 70-819, R.C.M. 1947, is amended to

1 read as follows:

2 "70-819. Enforcement of ~~act~~ chapter by residents of
3 state—statement of failure to enforce act—mandamus
4 —private suits for damages. (1) A resident of this state,
5 with knowledge that a requirement of this ~~act~~ chapter or a
6 rule adopted ~~under this act~~, under it is not being enforced
7 by a public officer or employee whose duty it is to enforce
8 the requirement or rule, may bring the failure to enforce to
9 the attention of the public officer or employee by a written
10 statement under oath that shall state the specific facts of
11 the failure to enforce the requirement or rule. Knowingly
12 making false statements or charges in the affidavit subjects
13 the affiant to penalties prescribed under the law of
14 perjury.

15 (2) If the public officer or employee neglects or
16 refuses for an unreasonable time after receipt of the
17 statement to enforce the requirement or rule, the resident
18 may bring an action of mandamus in the district court of the
19 first judicial district of this state, in and for the county
20 of Lewis and Clark. If the court finds that a requirement of
21 this ~~act~~ chapter or a rule adopted ~~under this act~~ under it
22 is not being enforced, the court may order the public
23 officer or employee, whose duty it is to enforce the
24 requirement or rule, to perform his duties. If he fails to
25 do so, the public officer or employee shall be held in

contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a utility person to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a utility facility. The remedies enumerated in this subsection do not exclude the use of any other remedy which may be available under the laws of the state."

Section 20. Section 70-820, B.C.M. 1947, is amended to read as follows:

"70-820. Adoption of rules—monitoring of facilities.

(1) The board and department may adopt rules implementing the provisions of this act, chapter, including, but not limited to, rules:

(a) governing the form and content of applications;

(b) further defining the terms used in this chapter;

(c) governing the form and content of long-range plans;

(d) designed to reduce the rate of growth of energy demands by limiting promotional activities by energy suppliers;

(e) any other rules the board considers necessary to accomplish the purposes and objectives of this chapter.

(2) The board and the department shall ~~have continuing~~ monitor the ~~authority and responsibility for monitoring~~ operations of all certificated facilities, for assuring continuing compliance with this ~~act~~ chapter and certificates issued hereunder, and for discovering and preventing noncompliance with this ~~act~~ chapter and ~~such the~~ certificates.

(3) The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to the possible future development of ~~an underground utility~~ a facility employing geothermal resources, to comply with the following requirements:

(a) Notify the department of the proposed action;

(b) Submit to the department a description of the area involved;

(c) Submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;

(d) Submit to the department geological data reports at such times as may be required by the rules; and

(e) Submit such other information as the board may require in the rules."

Section 21. Section 70-821, R.C.M. 1947, is amended to read as follows:

"70-821. Penalties for violation of ~~act~~ chapter civil action by attorney general. (1) Whoever

(a) without first obtaining a certificate ~~of site and facility~~ required under section 4 ~~[70-804]~~ 70-804, OR A WAIVER THEREOF UNDER SECTION 70-811 (4) (B) commences to construct or operate a ~~utility~~ facility ~~after the effective date of this act~~; or

(b) having first obtained a certificate ~~of site and facility~~, constructs, operates or maintains a ~~utility~~ facility other than in compliance with the certificate; or

(c) violates any other provision of this chapter or any rule or order adopted thereunder, or KNOWINGLY submits false information in any report or application required by this chapter or rule or order adopted thereunder; or

~~(e)~~ (d) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand

dollars (\$10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it shall ~~may~~ refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce ~~the act~~ this chapter or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond. The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(4) All fines collected shall be deposited in the state general fund."

Section 22. Section 70-822, R.C.M. 1947, is amended to read as follows:

"70-822. Grants, gifts and funds. The department ~~shall have authority to~~ may receive grants, gifts and other funds from any public or private source, to assist in its activities under this ~~act~~ chapter."

Section 23. Section 70-823, R.C.M. 1947, is amended to

1 read as follows:

2 "70-823. ~~set~~ Chapter supersedes other laws or
3 regulations. This ~~act~~ chapter supersedes other laws or
4 regulations. If any provision of this ~~act~~ chapter is in
5 conflict with any other law of this state, or any rule or
6 regulation promulgated thereunder, this ~~act~~ chapter shall
7 govern and control, and ~~each~~ the other law, rule or
8 regulation shall be deemed superseded for the purpose of
9 this ~~act~~ chapter."

10 Section 24. Amendments not indicative of legislative
11 interpretation of 1973 act—savings clause. The amendments
12 made by this act, or proposed to be made if this act should
13 not be enacted, do not indicate an expression of legislative
14 intent as to the interpretation of any provision of the
15 Montana Utility Siting Act of 1973 as it existed prior to
16 the introduction or enactment of this act. This act shall
17 not affect the outcome of any judicial or quasi-judicial
18 administrative proceeding commenced prior to the effective
19 date of this act.

20 Section 25. Applicability. The amendments made by
21 this act apply only to applications received by the
22 department after January 1, 1975. PERSONS REQUIRED TO FILE
23 LONG-RANGE PLANS UNDER THE AMENDMENTS MADE BY SECTION 14 OF
24 THIS ACT TO SECTION 70-814, R.C.M. 1967, SHALL HAVE UNTIL
25 JUNE 1, 1975, TO FILE SUCH PLANS.

1 Section 26. This act is effective on its passage and
2 approval.

—End—